

02:31PM

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, ) CR-18-00258-EJD  
)  
PLAINTIFF, )  
) SAN JOSE, CALIFORNIA  
VS. )  
) JANUARY 13, 2020  
ELIZABETH A. HOLMES AND RAMESH ) 2:30 P.M.  
SUNNY BALWANI, ) PAGES 1 - 79  
)  
DEFENDANTS. ) **SEALED PROCEEDINGS**  
)  
\_\_\_\_\_ )

TRANSCRIPT OF SEALED PROCEEDINGS  
BEFORE THE HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
BY: JOHN C. BOSTIC  
JEFFREY B. SCHENK  
JEFF NEDROW  
150 ALMADEN BOULEVARD, SUITE 900  
SAN JOSE, CALIFORNIA 95113  
  
BY: ROBERT S. LEACH  
VANESSA BAEHR-JONES  
1301 CLAY STREET, SUITE 340S  
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:  
IRENE L. RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT HOLMES: WILLIAMS & CONNOLLY LLP  
BY: KEVIN M. DOWNEY  
LANCE A. WADE  
KATHERINE A. TREFZ  
725 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20005

LAW OFFICE OF JOHN D. CLINE  
BY: JOHN D. CLINE  
ONE EMBARCADERO CENTER, SUITE 500  
SAN FRANCISCO, CALIFORNIA 94111

FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP  
BY: WALTER F. BROWN, JR.  
RANDALL LUSKEY  
THE ORRICK BUILDING  
405 HOWARD STREET  
SAN FRANCISCO, CALIFORNIA 94105

TELEPHONICALLY: BY: JEFFREY COOPERSMITH  
AMANDA MCDOWELL

ALSO PRESENT: MARIO SCUSSEL  
MATT NORFLEET

SAN JOSE, CALIFORNIA

JANUARY 13, 2020

P R O C E E D I N G S

(COURT CONVENED AT 2:39 P.M.)

THE COURT: THANK YOU. WE ARE BACK ON THE RECORD IN  
18-258, UNITED STATES VERSUS HOLMES AND BALWANI. ALL PARTIES  
PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

WE ARE PROCEEDING IN A SEALED COURTROOM. THE COURT HAS  
SEALED THE COURTROOM FOR PURPOSES OF THIS DISCUSSION.

I HAVE SEALED THE COURTROOM FROM THE PUBLIC BECAUSE I'M  
GOING TO ASK YOU QUESTIONS ABOUT DOCUMENTS THAT HAVE BEEN FILED  
UNDER SEAL, AND I HAVE PROVISIONALLY GRANTED THE SEALING OF  
CERTAIN DOCUMENTS, MANY DOCUMENTS UNDER SEAL.

I WANT TO HAVE A CONVERSATION ABOUT THOSE DOCUMENTS.  
INVARIABLY WE'LL PROBABLY DISCUSS THE CONTENTS OF SOME OF THOSE  
SEALED DOCUMENTS. AND FOR THAT REASON, TO CONTINUE WITH THE  
PROTECTIONS AS INDICATED WHEN I SIGNED THE SEALING ORDERS, I  
WANT TO PROTECT ALL OF THOSE ISSUES RAISED IN THOSE PLEADINGS  
AND THAT ORDER SO I'M CLOSING THE COURTROOM NOW.

PRESENT ARE, AS I INDICATED, ALL PARTIES PREVIOUSLY  
PRESENT. I THINK THERE ARE OTHER INDIVIDUALS WHO ARE ATTACHED  
TO THE GOVERNMENT.

MR. LEACH: YOUR HONOR, THERE ARE THREE GENTLEMEN ON  
THE LEFT SIDE OF THE COURTROOM HERE. ONE IS SPECIAL AGENT  
MARIO SCUSSEL, THE SECOND IS POSTAL INSPECTOR MATT NORFLEET --

THE COURT: -- AND THERE'S A GENTLEMAN ALL OF THE

02:40PM 1 WAY IN THE BACK. WHO IS THAT?

02:40PM 2 MR. LEACH: YES, THAT APPEARS TO BE JEFF NEDROW FROM

02:40PM 3 THE UNITED STATES ATTORNEY'S OFFICE.

02:40PM 4 THE COURT: OH, I SEE. THANK YOU.

02:40PM 5 WE WERE GOING TO CAPTURE, I THINK, MR. CAZARES, YOUR

02:40PM 6 CLIENT'S APPEARANCE TELEPHONICALLY. HAS THAT BEEN DONE?

02:40PM 7 MR. CAZARES: YES, YOUR HONOR, AND I DO BELIEVE THAT

02:40PM 8 MR. BALWANI AND MR. KATZ ARE ON THE LINE.

02:40PM 9 THE COURT: THANK YOU. MR. COOPERSMITH, ARE YOU

02:40PM 10 THERE?

02:40PM 11 MR. COOPERSMITH: YES, YOUR HONOR, I AM HERE WITH

02:40PM 12 MR. BALWANI AND MY COLLEAGUE, AMANDA MCDOWELL, AS WELL.

02:41PM 13 THE COURT: ALL RIGHT. THANK YOU.

02:41PM 14 AND YOU'RE IN A SECURED FACILITY, IF YOU WILL, SUCH THAT

02:41PM 15 THE PUBLIC IS NOT ABLE TO ACCESS THE CONVERSATION?

02:41PM 16 MR. COOPERSMITH: YES, YOUR HONOR.

02:41PM 17 THE COURT: ALL RIGHT. THANK YOU. COULD YOUR

02:41PM 18 CLIENT STATE HIS APPEARANCE, PLEASE.

02:41PM 19 DEFENDANT BALWANI: YES, YOUR HONOR. SUNNY BALWANI

02:41PM 20 PRESENT ALSO.

02:41PM 21 THE COURT: ALL RIGHT. THANK YOU. AND,

02:41PM 22 MR. CAZARES, YOU RECOGNIZE THAT VOICE AS YOUR CLIENT'S?

02:41PM 23 MR. CAZARES: YES, YOUR HONOR.

02:41PM 24 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

02:41PM 25 I WANTED TO DISCUSS -- FIRST OF ALL, WE HAD A SIDE-BAR

02:41PM 1 CONFERENCE, AND I INVITED COUNSEL TO COME THIS AFTERNOON TO  
02:41PM 2 CONTINUE OUR DISCUSSIONS.

02:41PM 3 I MENTIONED IN THAT SIDE-BAR, AND FIRST OF ALL, THAT  
02:41PM 4 TRANSCRIPT WILL BE SEALED AS WELL AS THIS TRANSCRIPT OF THIS  
02:41PM 5 PROCEEDING WILL BE SEALED AND NOT TO BE RELEASED ABSENT FURTHER  
02:41PM 6 ORDER OF THE COURT.

02:41PM 7 I MENTIONED AT THE OUTSET THAT I WAS CONCERNED ABOUT THE  
02:41PM 8 NUMBER OF SEALED DOCUMENTS, AND THERE ARE MANY. WE HAD  
02:42PM 9 OCCASION TO DRAFT OR COLLECT A ROSTER, IF YOU WILL, OF SOME OF  
02:42PM 10 THESE DOCUMENTS, AND WE PROVIDED THAT. I WANTED YOU TO HAVE  
02:42PM 11 BOTH -- BOTH SIDES TO HAVE THIS. THEY HAVE SEALED DOCKET ENTRY  
02:42PM 12 NUMBERS, THAT IS, THE DOCKET NUMBER, THE ECF NUMBER, BECAUSE I  
02:42PM 13 THINK WHEN YOU LOOK AT THE DOCKET ON THE COMPUTER ON ECF, OF  
02:42PM 14 COURSE THERE'S NO DOCUMENT NUMBER RELATED.

02:42PM 15 AND I DON'T KNOW -- IT CAUSED ME TO THINK THAT WHEN YOU  
02:42PM 16 GET YOUR COPIES BACK, THEY MAY NOT HAVE A DOCKET NUMBER ON  
02:42PM 17 THEM, AND I THOUGHT IF WE HAD A LINE-UP CARD, IT WOULD BE  
02:42PM 18 EASIER TO IDENTIFY WHAT WE'RE TALKING ABOUT.

02:42PM 19 I ASKED MS. KRATZMANN TO SUPPLY EACH OF YOU WITH A COPY OF  
02:42PM 20 THIS ROSTER FOR YOUR USE AS WELL AS A COPY OF DOCUMENTS THAT  
02:42PM 21 EACH OF YOU HAVE PROVIDED TO THE COURT SUCH THAT WE'RE  
02:43PM 22 LITERALLY ON THE SAME PAGE OR PAGES AND WE KNOW WHAT IS  
02:43PM 23 PRESENT.

02:43PM 24 AS I UNDERSTAND IT, I'M MISSING PERHAPS THREE DOCUMENTS.  
02:43PM 25 AND I THINK YOU HAVE MET AND CONFERRED, AND I'M LOOKING AT A

02:43PM 1 SHEET THAT PERHAPS ONE OF YOU OR PERHAPS ALL OF YOU PREPARED  
02:43PM 2 FOR MS. KRATZMANN.

02:43PM 3 THERE'S A MISSING PROFFER, A MISSING JOINDER TO  
02:43PM 4 MR. BALWANI'S ADMINISTRATIVE MOTION, AND I'M MISSING AN  
02:43PM 5 OPPOSITION TO A REPLY I THINK.

02:43PM 6 I'M NOT CERTAIN WHAT HAPPENED THERE. I DON'T KNOW IF  
02:43PM 7 THAT'S A VENDOR ISSUE. AGAIN, I DON'T WANT TO POINT BLAME.  
02:43PM 8 I'D LIKE TO FIND SOLUTIONS TO THAT.

02:43PM 9 MR. WADE: THANK YOU, YOUR HONOR. LANCE WADE FOR  
02:43PM 10 MS. HOLMES. WE APPRECIATE THE LIST FROM THE COURT. IT IS A  
02:43PM 11 LITTLE BIT OF A BLACK BOX WHEN WE SUBMIT THESE SEALED  
02:43PM 12 PLEADINGS, AND IT'S HARD TO SEE WHAT HAS BEEN RECEIVED AND WHAT  
02:44PM 13 IS NOT, PARTICULARLY GIVEN THAT WE'VE DONE IT THROUGH A VENDOR.

02:44PM 14 MANY OF THE PLEADINGS HAVE GONE THROUGH. IT APPEARS THAT  
02:44PM 15 SOME HAVE NOT, AND WE'VE WORKED WITH MS. KRATZMANN TO TRY AND  
02:44PM 16 IDENTIFY THOSE PLEADINGS THAT WERE NOT ON THE LIST, AND WE HAVE  
02:44PM 17 NOW SENT THOSE ELECTRONICALLY TO THE COURT.

02:44PM 18 ONE OF THOSE PLEADINGS IS AN EX PARTE. WE DID NOT COPY  
02:44PM 19 THE GOVERNMENT ON THAT SUBMISSION THROUGH MS. KRATZMANN. WE  
02:44PM 20 DID COPY THE GOVERNMENT ON THE OTHER PLEADINGS AND HAVE  
02:44PM 21 PREVIOUSLY SERVED THE GOVERNMENT WITH ALL OF THE OTHER  
02:44PM 22 PLEADINGS.

02:44PM 23 GOING FORWARD, WE INTEND -- IN CASE IT IS AN ERROR ON OUR  
02:44PM 24 VENDOR'S PART, WE INTEND TO FIND A NEW VENDOR REGARDLESS,  
02:44PM 25 AND --

02:44PM 1 THE COURT: PERHAPS THE FDA CAN HELP YOU WITH THAT.

02:44PM 2 MR. WADE: THEY SEEM TO BE CONSULTING A LOT OF THIRD  
02:44PM 3 PARTY SERVICE PROVIDERS SO MAYBE WE'LL CONSULT WITH THEM.

02:44PM 4 (LAUGHTER.)

02:44PM 5 MR. WADE: BUT WE'LL RETAIN A NEW VENDOR AND GOING  
02:45PM 6 FORWARD WE WILL ALSO PLAN TO SEND MS. KRATZMANN AN ELECTRONIC  
02:45PM 7 COPY AT THE SAME TIME THAT WE FILE THE DOCUMENT VIA E-MAIL  
02:45PM 8 COPYING COUNSEL FOR THE GOVERNMENT JUST TO MAKE SURE THAT  
02:45PM 9 THERE'S NO MISCOMMUNICATION ON THIS PART.

02:45PM 10 THE COURT: THANK YOU FOR THAT. AND THAT WOULD BE  
02:45PM 11 VERY HELPFUL TO THE COURT.

02:45PM 12 I DIDN'T REALIZE THE VOLUME OF SEALED DOCUMENTS THAT WE'D  
02:45PM 13 BE RECEIVING AND IT CREATES -- I WILL TELL YOU, WE WERE PUTTING  
02:45PM 14 THIS TOGETHER, AND IT WAS REMINISCENT OF A 3D CHESS GAME TRYING  
02:45PM 15 TO CAPTURE WHAT GOES WITH WHAT.

02:45PM 16 SO I HOPE GOING FORWARD WE CAN CONTINUE TO UPDATE THIS  
02:45PM 17 ROSTER AND AS WE -- IF THERE ARE ANY SEALED DOCUMENTS THAT ARE  
02:45PM 18 GOING TO BE FILED, WE'RE PROBABLY REACHING THE END OF THAT  
02:45PM 19 PRETTY SOON, BUT IF THERE ARE ANY, WE'LL TRY TO KEEP THE DOCKET  
02:45PM 20 NUMBERS IN SOME TYPE OF CONTINUOUS CAPTURING SO WE CAN ALL KEEP  
02:45PM 21 OUR EYES ON THAT.

02:46PM 22 THERE ARE SOME DOCUMENTS WE'RE STILL WORKING ON THAT I  
02:46PM 23 SHOULD TELL YOU I HAVE GOT THE CLERK'S OFFICE LOOKING AT SOME  
02:46PM 24 OTHER DOCUMENTS THAT HAVE NOT BEEN ECF NUMBERED FOR SOME  
02:46PM 25 REASON, BUT WE'LL CAPTURE ALL OF THAT SOON.

02:46PM 1 MR. WADE: AND OF COURSE IT'S POSSIBLE THOSE  
02:46PM 2 DOCUMENTS WERE SOME OF THE DOCUMENTS THAT WERE MISSING. IT'S  
02:46PM 3 HARD TO FIGURE OUT EXACTLY WHAT IS GOING ON.

02:46PM 4 OBVIOUSLY TO THE EXTENT THAT THIS RESPONSIBILITY FOR THIS  
02:46PM 5 ULTIMATELY RESTS WITH US AS OFFICERS OF THE COURT TO GET THE  
02:46PM 6 COURT THE NECESSARY FILING, SO WE APOLOGIZE TO THE COURT FOR  
02:46PM 7 ANY --

02:46PM 8 THE COURT: THANK YOU. WE'RE ALL GOING THROUGH IT  
02:46PM 9 TOGETHER, AND I JUST WANT TO CARVE OUT THIS TIME SO WE CAN  
02:46PM 10 RESOLVE THIS AS BEST WE CAN.

02:46PM 11 MR. LEACH: YOUR HONOR, IF I MAY? THANK YOU. THE  
02:46PM 12 GOVERNMENT HAS ALSO REVIEWED THE LIST THAT MS. KRATZMANN  
02:46PM 13 PROVIDED, AND IT WAS VERY HELPFUL. THANK YOU.

02:46PM 14 I BELIEVE THE GOVERNMENT'S SUBMISSIONS ARE ALL INCLUDED ON  
02:46PM 15 THIS LIST. WE'LL KEEP LOOKING AT IT TO MAKE SURE, BUT WE  
02:46PM 16 DIDN'T SEE ANYTHING MISSING.

02:46PM 17 THE COURT: GREAT.

02:46PM 18 MR. LEACH: THERE WERE TWO OTHER BRIEF  
02:46PM 19 PRELIMINARIES. THERE'S A DOJ POLICY AGAINST CONSENTING TO  
02:46PM 20 SEALING OF THE COURTROOM, AND I KNOW THE COURT HAS MADE A  
02:47PM 21 DECISION ON THIS, BUT IT'S IMPORTANT FROM MY PERSPECTIVE TO  
02:47PM 22 PRESERVE OUR OBJECTION TO THE RECORD FOR THAT.

02:47PM 23 THE COURT: OF COURSE.

02:47PM 24 MR. LEACH: I ALSO THINK THAT IN LIGHT OF SOME OF  
02:47PM 25 THE TOPICS THAT WE MIGHT GET INTO, IT'S IMPORTANT THAT



02:47PM 1 MR. BALWANI BE REQUESTED TO SUBMIT A WRITTEN WAIVER OF HIS  
02:47PM 2 APPEARANCE TODAY IN CASE ANY OF THE SUBSTANTIVE ISSUES RELATED  
02:47PM 3 TO SOME OF THE FILINGS COME UP, AND I THINK IT WOULD BE PRUDENT  
02:47PM 4 FOR THE COURT TO ASK FOR THAT.

02:47PM 5 THE COURT: MR. CAZARES, CAN YOU ARRANGE FOR THAT  
02:47PM 6 WITH MR. COOPERSMITH?

02:47PM 7 MR. CAZARES: OF COURSE, YOUR HONOR.

02:47PM 8 THE COURT: ALL RIGHT. ANY OBJECTION TO THAT,  
02:47PM 9 MR. COOPERSMITH, FOR YOUR CLIENT?

02:47PM 10 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

02:47PM 11 THE COURT: ALL RIGHT. THANK YOU. SO WE'LL PROCEED  
02:47PM 12 WITH THE SEALED DOCUMENTS AS WE'VE TALKED ABOUT HERE, AND THANK  
02:47PM 13 YOU FOR YOUR ATTENTION TO THAT.

02:47PM 14 LET ME MOVE TO A QUESTION THAT I HAVE ABOUT THE SEVERANCE  
02:48PM 15 AND MR. BALWANI'S SEVERANCE MOTION.

02:48PM 16 IS THE GOVERNMENT'S OPPOSITION TO THAT DUE TODAY?

02:48PM 17 MS. BAEHR-JONES: YOUR HONOR, IF I COULD ADDRESS THE  
02:48PM 18 GOVERNMENT'S PROPOSED SCHEDULE FOR THIS?

02:48PM 19 THE COURT: WELL, LET ME -- IS IT DUE TODAY?

02:48PM 20 MS. BAEHR-JONES: WELL, YOUR HONOR, BASED ON WHAT  
02:48PM 21 THEY NOTICED IN THE FILING, THEY NOTICED THE FEBRUARY 10TH  
02:48PM 22 HEARING WITH THE OPPOSITION DATE DUE TODAY, WHICH IS WHY THE  
02:48PM 23 GOVERNMENT FILED ITS ADMINISTRATIVE MOTION AS SOON AS WE WERE  
02:48PM 24 ABLE TO RESPOND TO THAT TO SET FORTH SOME PROPOSED DATES FOR  
02:48PM 25 THE COURT IN LIGHT OF WHAT THEY NOTICED.

02:48PM 1 THE COURT: RIGHT. RIGHT. THIS IS REGARDING YOUR  
02:48PM 2 REQUEST THAT THE COURT ENGAGE 12.2 PROCEEDINGS NOW.

02:48PM 3 MS. BAEHR-JONES: CORRECT, YOUR HONOR.

02:48PM 4 THE COURT: RIGHT. OKAY. SO LET ME JUST -- I HAVE  
02:48PM 5 SOME REAL BASIC QUESTIONS ABOUT THIS, AND THEY SOMEWHAT OVERLAP  
02:48PM 6 PERHAPS, BUT IT REALLY IS GEARED TOWARDS MS. HOLMES AND HER  
02:48PM 7 TABLE.

02:48PM 8 I SUPPOSE A THRESHOLD QUESTION IS, A QUESTION IS WHETHER  
02:49PM 9 OR NOT MS. HOLMES WILL TESTIFY AT TRIAL AS TO THE FACTS AS  
02:49PM 10 INDICATED IN THE UNSWORN DECLARATION OF DR. MECHANIC.

02:49PM 11 I POSE THAT AS A QUESTION BECAUSE I THINK THAT DRIVES, IT  
02:49PM 12 CERTAINLY DRIVES CERTAIN DECISIONS THAT THE COURT HAS TO MAKE.

02:49PM 13 AGAIN, I'M TALKING BROAD HERE, AND I'M NOT ASKING THE  
02:49PM 14 DEFENSE TO ANSWER THIS QUESTION RIGHT NOW, MS. HOLMES'S DEFENSE  
02:49PM 15 TEAM TO ANSWER THIS QUESTION, BUT I'M TELLING YOU THAT THESE  
02:49PM 16 ARE THINGS THAT I THINK ARE VITAL TO THE COURT'S DECISION ABOUT  
02:49PM 17 WHAT IT'S GOING TO DO IN REGARDS TO SEVERANCE AND WHAT IT'S  
02:49PM 18 GOING TO DO IN REGARDS TO THE GOVERNMENT'S MOTION.

02:49PM 19 AND THE QUESTION I HAVE IS THIS, I'M NOT CLEAR FROM THE  
02:49PM 20 PLEADINGS, MS. HOLMES'S PLEADINGS, AS TO WHETHER OR NOT  
02:49PM 21 MS. HOLMES WILL BE ADVANCING A DURESS DEFENSE, A DURESS  
02:50PM 22 DEFENSE, A PURE DURESS DEFENSE, OR WHETHER SHE'LL BE ADVANCING  
02:50PM 23 A MENS REA DEFENSE. AND THOSE ARE, AS YOU KNOW, TWO DIFFERENT  
02:50PM 24 THINGS. SOMETIMES THEY OVERLAP AND SOMETIMES THEY'RE THE SAME.

02:50PM 25 LET ME TELL YOU MY THOUGHTS ABOUT THIS ARE, AND THIS

02:50PM 1 RELATES TO THE SEVERANCE MOTION, IF MS. HOLMES IS GOING TO  
02:50PM 2 TESTIFY ABOUT CONDUCT AS INDICATED IN THE UNSWORN DECLARATION  
02:50PM 3 OF THE DOCTOR, IF SHE TESTIFIES ABOUT THAT HERSELF, QUERY DO WE  
02:50PM 4 NEED EXPERT TESTIMONY TO SUPPORT SOMETHING, WHICH IS TO SAY IF  
02:50PM 5 SHE TESTIFIES THAT MR. BALWANI ENGAGED IN CONDUCT THAT IS  
02:50PM 6 INDICATED THERE, WHICH SHE COULD DO IF SHE WANTS TO, THAT'S  
02:50PM 7 SOMETHING TO CONSIDER AS TO MR. BALWANI'S SEVERANCE MOTION.

02:51PM 8 IF, IF AN EXPERT IS GOING TO TESTIFY ABOUT AN EXAMINATION  
02:51PM 9 OF AN INDIVIDUAL, LET ME JUST PUT IT THAT WAY, AN EXAMINATION  
02:51PM 10 OF AN INDIVIDUAL AND THE EXPERT'S TESTING, SCORING, AND OPINION  
02:51PM 11 ABOUT THE TESTING AS TO A CONDITION THAT THIS TESTING SUGGESTS  
02:51PM 12 WITHOUT GETTING INTO THE STATEMENTS THAT THE PATIENT MADE TO  
02:51PM 13 THE EXPERT, THAT'S A WHOLE DIFFERENT THING, ISN'T IT? AND --  
02:51PM 14 FOR EXAMPLE, AN EXPERT COULD TESTIFY AND I KNOW THAT X  
02:51PM 15 CONDITION EXISTS; THE MANIFESTATION OF THAT CONDITION ARE THESE  
02:51PM 16 FIVE SYMPTOMS, THESE FIVE THINGS, FOUR THINGS; I ADMINISTERED  
02:52PM 17 MMPI'S; I ADMINISTERED ALL OF THESE TESTING; I SCORED THEM, THE  
02:52PM 18 RESULTS OF THESE INDICATE THAT THIS PERSON MAY HAVE THE  
02:52PM 19 CHARACTERISTICS OF THAT.

02:52PM 20 YOU CAN'T TESTIFY THAT THIS PERSON IS THAT, BUT MAY BE  
02:52PM 21 ABLE TO TESTIFY THAT THOSE CONDITIONS OF WHATEVER IT IS, MAY  
02:52PM 22 HAVE BEEN MANIFESTED BY THE PATIENT, BY THE WITNESS. THAT'S  
02:52PM 23 SOMETHING THAT IS ENTIRELY DIFFERENT AS WELL.

02:52PM 24 IT MAY BE THAT AN EXPERT WOULD TESTIFY AS TO SIMILAR  
02:52PM 25 CONDITIONS, SIMILAR TESTING TO PERHAPS SUPPORT THE CREDIBILITY

02:52PM 1 OF A WITNESS WHO WOULD TESTIFY AND SUPPORT THE CREDIBILITY OF A  
02:52PM 2 WITNESS WHO MIGHT OTHERWISE BE SEEN, WELL, HOW COULD SOMEONE  
02:52PM 3 STAY IN -- LET'S JUST USE A HYPOTHETICAL -- A DOMESTIC VIOLENCE  
02:53PM 4 RELATIONSHIP? HOW DO PEOPLE DO THAT? IN A CHILD MOLESTATION  
02:53PM 5 SITUATION, HOW COME THE REPORTING DIDN'T HAPPEN SOONER? WHY  
02:53PM 6 DID THEY WAIT SIX MONTHS? EIGHT YEARS? WELL, WE KNOW THERE'S  
02:53PM 7 LITERATURE THAT DESCRIBES THOSE TYPES OF CONDUCT.

02:53PM 8 AN EXPERT MIGHT TESTIFY AS TO WHY SOMEONE WOULD DELAY  
02:53PM 9 REPORTING OR WHATEVER THE SYMPTOM MIGHT BE.

02:53PM 10 SO I'M SPEAKING AT A HIGH LEVEL HERE. I'M NOT ASKING THE  
02:53PM 11 DEFENSE TO TELL US PUBLICLY TODAY WHAT YOUR DEFENSE IS, UNLESS  
02:53PM 12 YOU WANT TO DO THAT, BUT I'M SUGGESTING TO YOU THAT THESE ARE  
02:53PM 13 ISSUES, I THINK, ARE CRITICAL TO THE 12.2 AND THE SEVERANCE  
02:53PM 14 MOTION AS TO MR. BALWANI.

02:53PM 15 AND I'M TRYING TO BE AS TRANSPARENT AS I CAN ABOUT WHAT  
02:53PM 16 THE COURT'S THINKING IS, BECAUSE THESE ARE ISSUES THAT WILL  
02:53PM 17 COME UP.

02:53PM 18 ANOTHER SUB ISSUE ABOUT THIS IS THAT IT APPEARS FROM THE  
02:54PM 19 FILINGS FROM MS. HOLMES -- AND LET ME JUST ASK THIS, ALL  
02:54PM 20 PARTIES HAVE THESE FILINGS. MR. BALWANI HAS THESE FILINGS AS  
02:54PM 21 WELL. I'M NOT TALKING OUT OF SCHOOL HERE. IS THAT --

02:54PM 22 MR. DOWNEY: YOUR HONOR, THERE WAS ONE FILING THAT  
02:54PM 23 WAS SUBMITTED EX PARTE. I DON'T THINK THE COURT HAD IT SO I  
02:54PM 24 DON'T THINK THE COURT HAS IT IN MIND.

02:54PM 25 THE COURT: ALL RIGHT. THANK YOU.

02:54PM 1 BUT ONE THING THAT DOES COME TO MIND ABOUT THESE IS  
02:54PM 2 MS. HOLMES HAS ALREADY BEEN EXAMINED. THERE'S BEEN A REPORT.  
02:54PM 3 WE HAVE THE UNSWORN DECLARATION AND A QUESTION THAT COMES IN MY  
02:54PM 4 MIND IS, WELL, WHY NOT ADVANCE THAT NOW? WHAT IS THE PREJUDICE  
02:54PM 5 TO MS. HOLMES TO GO FORWARD WITH THAT EXCHANGE, THAT PROCESS,  
02:54PM 6 THE 12.2(B) (1) (C) AND ALL OF THAT?

02:54PM 7 AGAIN, THIS IS RHETORICAL RIGHT NOW, BUT I'M JUST SHARING  
02:54PM 8 WITH YOU MY THOUGHTS.

02:54PM 9 WHAT IS THE PREJUDICE TO BEGIN THAT PROCESS NOW AS OPPOSED  
02:55PM 10 TO WAIT? AGAIN, IT'S TWO LEVELS, SEVERANCE AND THEN TRIAL.

02:55PM 11 AND THE GOVERNMENT SUGGESTS IN THEIR MOTION THAT, WELL,  
02:55PM 12 BEFORE YOU CAN DECIDE, JUDGE, WHETHER OR NOT MS. HOLMES'S  
02:55PM 13 MOTION FOR SEVERANCE SHOULD BE DECIDED, WE SHOULD BE ABLE TO  
02:55PM 14 LOOK AT TESTS AND DO OUR OWN EXAMINATION.

02:55PM 15 AND THAT HAS SOME CURRENCY. I HAVE TO SAY, THAT DOES HAVE  
02:55PM 16 SOME CURRENCY. THAT DOES SEEM LIKE THAT IS AN APPROPRIATE WAY  
02:55PM 17 TO PROCEED.

02:55PM 18 I GO BACK TO MY EARLIER COMMENTS, THOUGH, ABOUT WHAT THE  
02:55PM 19 TESTIMONY IS -- MIGHT BE LIKE, AND I KNOW IN THE -- AND THIS IS  
02:55PM 20 VERY CAREFUL PLEADING.

02:55PM 21 IN THE PLEADINGS IT'S STATED, THE PLEADINGS THAT I'VE READ  
02:55PM 22 STATE, "THE WITNESS MAY TESTIFY, MAY TESTIFY." I REALIZE  
02:55PM 23 THAT'S VERY CAREFULLY CRAFTED.

02:55PM 24 BUT I TELL YOU THAT'S A SIGNIFICANT TERM FOR ME TO DECIDE  
02:56PM 25 MR. BALWANI'S MOTION.

02:56PM 1 FOR EXAMPLE, IF A WITNESS SAID IN A CODEFENDANT SITUATION,  
02:56PM 2 IF THE JUDGE HEARS THAT A WITNESS IS -- I INTEND TO TESTIFY X  
02:56PM 3 ABOUT MY CODEFENDANT, THAT'S A VERY DIFFERENT SITUATION, AND  
02:56PM 4 THE COURT -- AND THAT PUTS THAT SCENARIO IN A DIFFERENT FACTUAL  
02:56PM 5 SITUATION.

02:56PM 6 WE'VE ALL READ THOSE CASES WHERE THERE'S AN AFFIRMATIVE  
02:56PM 7 STATEMENT ABOUT WHAT THE DEFENSE IS AND HOW THE JUDGE SHOULD  
02:56PM 8 RULE ON THAT WHEN SHE LOOKS AT THOSE FACTS AND WHETHER SHE  
02:56PM 9 SHOULD GRANT A SEVERANCE AT THAT TIME OR WHETHER SHE SHOULD  
02:56PM 10 WAIT FOR TRIAL OR WHERE THE BEST DECISION TIME, SHALL WE SAY,  
02:56PM 11 WOULD BE.

02:56PM 12 I WOULD LIKE TO MAKE DECISIONS ON THESE SEVERANCE MOTIONS  
02:56PM 13 EARLY. I JUST THINK THAT IS BETTER FOR YOU AND BETTER FOR THE  
02:57PM 14 COURT. IT WOULD ALLOW YOU TO PREPARE YOUR DEFENSES  
02:57PM 15 ACCORDINGLY, IF THE COURT GRANTS THE MOTION.

02:57PM 16 IF THE COURT DENIES THE MOTIONS, AT LEAST EVERYBODY KNOWS  
02:57PM 17 WHAT THE FIELD IS AND WHAT YOU'RE LOOKING AT, AND MY SENSE IS  
02:57PM 18 THAT WILL BENEFIT ALL OF YOU.

02:57PM 19 I APPRECIATE COUNSEL'S STATEMENTS THIS MORNING WHERE YOU  
02:57PM 20 INDICATED THAT YOU WERE EAGER TO GO TO TRIAL AND YOU WANT TO  
02:57PM 21 EXONERATE YOUR CLIENT, AND OF COURSE HE ENJOYS THE PRESUMPTION  
02:57PM 22 OF INNOCENCE, BUT YOU WOULD LIKE TO FULLY GET EXONERATION FOR  
02:57PM 23 MR. BALWANI, AND I THINK ALL OF US WOULD LIKE TO PROCEED TO  
02:57PM 24 TRIAL. THAT'S WHY I SET THE CASE. I THINK I WAS REMINDED I  
02:57PM 25 ADVANCED THE TRIAL DATE AS OPPOSED TO GIVING YOU A LITTLE BIT

02:57PM 1 MORE TIME.

02:57PM 2 AND IN HINDSIGHT I LOOK AT THAT NOW, BUT I'D LIKE TO DO  
02:57PM 3 THAT, TOO. I'D LIKE TO GET THE CASE TO TRIAL AS SOON AS  
02:57PM 4 POSSIBLE FOR ALL OF YOUR SAKES.

02:58PM 5 SO THOSE ARE QUESTIONS, BUT THOSE ARE THE INITIAL  
02:58PM 6 QUESTIONS THAT I HAVE REGARDING THE SEVERANCE MOTIONS.

02:58PM 7 I THINK THE DISCOVERY ISSUES ABOUT THE FDA, AND LET ME  
02:58PM 8 JUST BE FRANK BECAUSE WE'RE ALL FRIENDS HERE, THE SEARCH FOR  
02:58PM 9 THE FDA ISSUES, I REALIZE THAT'S IMPORTANT INFORMATION FOR THE  
02:58PM 10 DEFENSE, BUT AS I LOOK AT THE PLEADINGS, THAT'S NOT YOUR  
02:58PM 11 PRIMARY DEFENSE. DON'T ANSWER THE QUESTION. I'M JUST OPINING  
02:58PM 12 HERE.

02:58PM 13 IT APPEARS THAT FROM WHAT I'VE READ IS THAT THE FDA ISSUES  
02:58PM 14 THE REGULATIONS AND THOSE TYPES OF THINGS, THAT'S IMPORTANT, I  
02:58PM 15 REALIZE THAT, BUT I'M NOT CERTAIN THAT'S YOUR CRITICAL DEFENSE  
02:58PM 16 OR NOT. DON'T ANSWER THE QUESTION. I'M NOT ASKING FOR THAT.

02:58PM 17 BUT WHEN YOU FILED A 12.2 NOTICE, IT SEEMS TO SUGGEST THAT  
02:58PM 18 THAT'S WHAT YOU'RE GOING TO PURSUE LOOKING AT HOLMES'S TABLE  
02:58PM 19 HERE, PARDON ME.

02:58PM 20 AND THEN MR. BALWANI PROCEEDED WITH DEPOSITIONS TODAY  
02:59PM 21 WITHOUT A LOT OF THE DOCUMENTS HERE WHICH SUGGESTS TO ME, WELL,  
02:59PM 22 HOW IMPORTANT WERE THEY IF YOU'RE WILLING TO GO TO A DEPOSITION  
02:59PM 23 AND NOT HAVE THEM? SURE, YOU WOULD HAVE LIKED TO HAVE HAD  
02:59PM 24 THEM. I'M SURE MR. COOPERSMITH WOULD HAVE FELT LIKE, WELL,  
02:59PM 25 GEE, IF I HAD THEM, I PERHAPS COULD HAVE DONE A BETTER JOB HERE

02:59PM 1 OR BEEN INFORMED ABOUT IT.

02:59PM 2 BUT I'M NOT MAKING LIGHT OF THE FDA RECORDS. I'M JUST  
02:59PM 3 SUGGESTING THIS IS A WIRE FRAUD CASE, AND IT HAS UNIQUE FACTS  
02:59PM 4 AND CIRCUMSTANCES TO IT. I'M NOT CERTAIN THAT THOSE RECORDS  
02:59PM 5 ARE CRITICAL TO YOUR DEFENSE. I'M NOT CERTAIN THAT THOSE ARE  
02:59PM 6 THE MOST IMPORTANT PIECES OF EVIDENCE THAT'S GOING TO SUPPORT  
02:59PM 7 YOUR CASES OR NOT, AND I'M NOT MAKING ANY JUDGMENT ON IT.

02:59PM 8 AGAIN, I'M JUST TALKING AT A VERY HIGH LEVEL RIGHT NOW  
02:59PM 9 JUST SO ALL OF YOU KNOW WHAT MY THOUGHT IS AND WHETHER OR NOT  
02:59PM 10 THESE THOUGHTS WILL ASSIST US MOVING FORWARD IN SOME MANNER AND  
02:59PM 11 ASSIST YOU IN SOME MANNER AS YOU PREPARE, AS YOU PREPARE YOUR  
02:59PM 12 CASES.

03:00PM 13 SO THOSE ARE MY OVERARCHING THOUGHTS ABOUT THE SEVERANCE  
03:00PM 14 AND THE GOVERNMENT'S MOTION FOR MORE TIME.

03:00PM 15 LET ME JUST TELL YOU THIS -- OH, THAT'S OKAY. AND YOU CAN  
03:00PM 16 COME FORWARD TO THE LECTERN IF YOU WOULD LIKE.

03:00PM 17 ONE THING I'M THINKING OF DOING AS TO THE MOTION TO EXTEND  
03:00PM 18 TIME, WHAT I'M LIKELY TO DO, AND I'M HAPPY TO HEAR FROM YOU  
03:00PM 19 ABOUT THIS, BUT MY SENSE IS THAT I'M INCLINED TO NOT EXTEND  
03:00PM 20 TIME BUT NOT TO -- WHAT ARE THE SANCTIONS? YOU KNOW, WHAT ARE  
03:00PM 21 THE SANCTIONS WHEN THERE'S FAILURE TO PRODUCE? WELL, IT'S A  
03:00PM 22 CONTINUANCE, ISN'T IT? THAT'S REALLY WHAT IT IS. AND IT'S A  
03:00PM 23 CONTINUANCE, AND I'M LOATHE TO DO THAT. I AM SURE YOU ALL  
03:00PM 24 LOATHE TO CONTINUE THIS, TOO. YOU'VE CHARTERED YOUR LIVES FOR  
03:00PM 25 2020 IN A VERY UNIQUE WAY I'M SURE.



03:00PM 1 SO WHAT I'M INCLINED TO DO AT THIS POINT IS TO NOT EXTEND  
03:00PM 2 TIME BUT CONTINUE LOOKING AT THIS, AND WE'LL PROBABLY LOOK AT  
03:00PM 3 IT AGAIN FEBRUARY 10TH AND PROBABLY REVISIT WHERE WE ARE.

03:01PM 4 MS. BAEHR-JONES: YOUR HONOR, BECAUSE I THOUGHT IT  
03:01PM 5 WOULD BE EASY TO ADDRESS ONE OF YOUR CONCERNS, AND THAT IS THE  
03:01PM 6 TIMELINE FOR THE GOVERNMENT'S PROPOSED SCHEDULE BECAUSE THE  
03:01PM 7 GOVERNMENT IS VERY COMMITTED TO GETTING THINGS DONE QUICKLY AND  
03:01PM 8 EFFICIENTLY FOR THE COURT.

03:01PM 9 THIS WAS AN OPTIMISTIC TIMELINE, BUT IT CAN BE TRUNCATED.  
03:01PM 10 I'VE DONE THIS IN AS SHORT AS THREE WEEKS A 12.2 BACK AND  
03:01PM 11 FORTH.

03:01PM 12 THE COURT: SO YOU'RE TALKING ABOUT THE 12.2  
03:01PM 13 SCHEDULE?

03:01PM 14 MS. BAEHR-JONES: SORRY. YES. SO THE GOVERNMENT'S  
03:01PM 15 PROPOSED SCHEDULE ON HOW TO ACCOMPLISH JUST SOME OF THE THINGS  
03:01PM 16 THAT THE GOVERNMENT THINKS ARE IMPORTANT TO GET A RECORD ON  
03:01PM 17 BEFORE THE COURT RULES ON THE MOTIONS TO SEVER BECAUSE --

03:01PM 18 THE COURT: TELL ME WHERE YOUR SCHEDULE IS AND WHAT  
03:01PM 19 DOCUMENT SO WE CAN ALL GET IT.

03:01PM 20 MS. BAEHR-JONES: OKAY. YES, THIS IS THE  
03:01PM 21 GOVERNMENT'S ADMINISTRATIVE MOTION TO SET DEADLINES OF  
03:01PM 22 SCHEDULES AND THE NUMBER IS --

03:01PM 23 MR. LEACH: I BELIEVE IT'S DOCKET NUMBER 248, YOUR  
03:01PM 24 HONOR.

03:01PM 25 THE COURT: OKAY. THANK YOU.

03:01PM 1 MR. LEACH: IT WAS FILED ON DECEMBER 30TH, 2019,  
03:01PM 2 AND -- WELL, LODGED ON DECEMBER 30TH, AND I BELIEVE THE COURT  
03:02PM 3 ORDERED IT FILED ON JANUARY 10TH.

03:02PM 4 THE COURT: YES, YES, I HAVE IT.

03:02PM 5 IT'S 246 DID YOU SAY?

03:02PM 6 MR. LEACH: 248.

03:02PM 7 THE COURT: 248. OKAY.

03:02PM 8 YES.

03:02PM 9 MS. BAEHR-JONES: AND THE PROPOSED SCHEDULE IS ON  
03:02PM 10 PAGE 2.

03:02PM 11 THE COURT: OKAY. DO WE ALL HAVE THAT? DOES  
03:02PM 12 EVERYBODY HAVE THAT?

03:02PM 13 MR. CAZARES: YES, YOUR HONOR.

03:02PM 14 MR. WADE: YES, YOUR HONOR.

03:02PM 15 MS. BAEHR-JONES: SO THIS JUST BUILDS IN QUITE A BIT  
03:02PM 16 OF TIME, BUT IT CAN EASILY BE TRUNCATED TO MOVE THIS PROCESS  
03:02PM 17 ALONG AND THEN GET THAT TO THE COURT SO THE COURT CAN HAVE A  
03:02PM 18 BASIS FOR THE FULL RECORD FOR RULING ON THE MOTIONS TO SEVER  
03:02PM 19 EARLIER, WHICH I THINK ALL OF THE PARTIES WOULD BE IN AGREEMENT  
03:02PM 20 THAT WE WOULD WANT THAT AS SOON AS WE COULD KNOW TO PREPARE  
03:02PM 21 PROPERLY FOR TRIAL.

03:02PM 22 THE COURT: OKAY. MR. WADE OR MR. DOWNEY?

03:02PM 23 MR. DOWNEY: YOUR HONOR, KEVIN DOWNEY FOR  
03:02PM 24 MS. HOLMES.

03:03PM 25 I WANT TO ANSWER THE COURT'S QUESTION AS BEST I CAN FOR

03:03PM 1 PURPOSES OF TODAY.

03:03PM 2 THE COURT: SURE. AND LET ME TELL YOU, AGAIN, I'M  
03:03PM 3 NOT ASKING YOU TO REVEAL ANYTHING YOU DON'T WANT TO REVEAL,  
03:03PM 4 INCLUDING AND PARTICULARLY ANY DEFENSE THAT YOU FEEL THAT I'M  
03:03PM 5 ASKING YOU TO REVEAL TODAY. THAT'S NOT WHAT I'M DOING. I WAS  
03:03PM 6 MAKING HIGH-LEVEL COMMENTS ABOUT CONSIDERATION FOR THE MOTIONS.

03:03PM 7 MR. DOWNEY: I APPRECIATE THAT, YOUR HONOR. AND I  
03:03PM 8 RECOGNIZE THAT PART OF THE INQUIRY THE COURT HAS TO MAKE WHEN  
03:03PM 9 DECIDING A SEVERANCE MOTION IS HOW LIKELY IS IT THAT THE ISSUE  
03:03PM 10 THAT IS PRESENTED FOR SEVERANCE WILL ARISE DURING THE TRIAL.

03:03PM 11 SO WE THOUGHT ABOUT THAT A GOOD DEAL --

03:03PM 12 THE COURT: I'M SURE YOU DID.

03:03PM 13 MR. DOWNEY: -- BEFORE WE FILED OUR 12.2 NOTICE,  
03:03PM 14 WHICH IS REALLY -- I THINK AS THE COURT HAS ALREADY GLEANED, A  
03:03PM 15 NUMBER OF THINGS HAPPENED IN DECEMBER THAT RELATED TO THIS  
03:03PM 16 ISSUE, ALL OF WHICH ARE SOMEWHAT DISTINCT FROM EACH OTHER.

03:04PM 17 THE FIRST THING THAT HAPPENED WAS THAT MS. HOLMES FILED  
03:04PM 18 HER 12.2 NOTICE. THAT'S A TRIAL NOTICE ISSUE, AND IT GIVES THE  
03:04PM 19 POTENTIAL ABILITY TO THE GOVERNMENT TO DO AN EXAMINATION AFTER  
03:04PM 20 WE DO ANY FINAL EXPERT REPORT, WHICH IS IN TURN RESPONSIVE TO  
03:04PM 21 THE GOVERNMENT'S CASE ON THE ISSUE OF MENS REA.

03:04PM 22 SO THAT'S REALLY AN ISSUE OF TRIAL PREPARATION FOR THE  
03:04PM 23 GOVERNMENT.

03:04PM 24 OF COURSE, WHEN THE COURT ULTIMATELY DECIDES WHETHER AN  
03:04PM 25 EXAMINATION IS APPROPRIATE OR NOT, THERE'S A BACKDROP OF

03:04PM 1 SIGNIFICANT FIFTH AND SIXTH AMENDMENT ISSUES WHICH I'M SURE AT  
03:04PM 2 SOME POINT WE WOULD HAVE TO DISCUSS.

03:04PM 3 THE SECOND THING THAT HAPPENED IS ANTICIPATING THE FILING  
03:04PM 4 OF THAT MOTION, MR. BALWANI FILED HIS MOTION TO SEVER --

03:04PM 5 THE COURT: HE FILED FIRST AND IT WAS --

03:04PM 6 MR. DOWNEY: HE DID.

03:04PM 7 THE COURT: HE FILED FIRST. CANDIDLY, I SAW IT AS  
03:05PM 8 UNTIMELY BECAUSE YOU HAD NOT SAID ANYTHING, AND HIS MOTION WAS  
03:05PM 9 FILED BASED ON I THINK A PERHAPS COMMUNICATION BETWEEN COUNSEL.

03:05PM 10 MR. DOWNEY: NO. WHAT OCCURRED, YOUR HONOR, IS,  
03:05PM 11 JUST TO REMIND THE COURT, WE HAD BEEN HERE APPRISING THE COURT  
03:05PM 12 OF THIS POTENTIAL ISSUE IN THE LATE SUMMER.

03:05PM 13 WE CONDUCTED -- THE FORENSIC PSYCHOLOGIST CONDUCTED AN  
03:05PM 14 EXAMINATION, AND WE GOT REPORTS FROM THAT EXAMINATION, AND THEN  
03:05PM 15 BY LETTER IN SEPTEMBER WE GAVE NOTICE TO MR. BALWANI, AND THAT  
03:05PM 16 LETTER IS ATTACHED TO HIS MOTION TO SEVER.

03:05PM 17 THE COURT: OKAY. I THINK YOU SUGGESTED SOMETHING  
03:05PM 18 THAT THIS WAS BEFORE THE COURT IN JUNE I THINK YOU SAID.

03:05PM 19 MR. DOWNEY: I THINK IN THE -- IT WAS -- I BELIEVE  
03:05PM 20 IT WAS JULY.

03:05PM 21 THE COURT: AND I DON'T THINK THE GOVERNMENT WAS  
03:05PM 22 PART OF THAT.

03:05PM 23 MR. DOWNEY: NO. I UNDERSTAND, YOUR HONOR,  
03:05PM 24 ALTHOUGH --

03:05PM 25 THE COURT: DO YOU UNDERSTAND WHAT I'M SAYING?

03:05PM 1 MR. DOWNEY: I DO. I DO.

03:06PM 2 AND I BELIEVE THE NOTICE TO MR. BALWANI IS ATTACHED TO HIS  
03:06PM 3 PLEADING.

03:06PM 4 THE COURT: LET ME JUST INDICATE THE COURT IS NOT  
03:06PM 5 GOING TO, WITHOUT YOUR PERMISSION, I'M NOT GOING TO REVEAL  
03:06PM 6 ANYTHING THAT WAS DISCUSSED IN AN EX PARTE HEARING.

03:06PM 7 MR. DOWNEY: FINE. THANK YOU, YOUR HONOR.

03:06PM 8 THE COURT: BUT THAT'S UP TO YOU.

03:06PM 9 MR. DOWNEY: I APPRECIATE THAT, AND I DON'T HAVE ANY  
03:06PM 10 ISSUE DISCLOSING THAT WE SENT A LETTER AND THAT IT WAS -- IT  
03:06PM 11 FOLLOWED ONE OF THE EX PARTE CONFERENCES.

03:06PM 12 THE COURT: OKAY.

03:06PM 13 MR. LEACH: I THINK IT IS IMPORTANT TO NOTE THAT  
03:06PM 14 FACT, YOUR HONOR.

03:06PM 15 THE FIRST TIME THE GOVERNMENT IS LEARNING OF THIS  
03:06PM 16 POTENTIAL DEFENSE IS DECEMBER 3RD OR DECEMBER 5TH OF 2019. SO  
03:06PM 17 AT THE TIME THE SCHEDULING ORDER IS SET, WE HAVE NO KNOWLEDGE  
03:06PM 18 OF THE MOTION TO SEVER BASED ON THE LIKELY 12.2 DEFENSE, AND WE  
03:06PM 19 HAVE NO IDEA WHAT MR. BALWANI'S RESPONSE TO THAT MIGHT BE. SO  
03:06PM 20 THE COURT IS CORRECT THAT WE LEARNED ABOUT THIS IN DECEMBER.

03:07PM 21 MR. DOWNEY: YEAH. AND OF COURSE WE HAVE NO IDEA  
03:07PM 22 WHAT MR. BALWANI'S RESPONSE IS, EITHER. WE JUST WANTED TO  
03:07PM 23 PROVIDE THAT NOTICE TIMELY TO HIM.

03:07PM 24 MR. BALWANI'S MOTION, OF COURSE, RAISES THE POSSIBILITY OF  
03:07PM 25 PREJUDICE, WHICH LEADS TO THE FIRST QUESTION THE COURT ASKED.

03:07PM 1 AND OF COURSE I'M NOT IN A POSITION TO COMMENT ON  
03:07PM 2 DEFENDANT TESTIMONY AS THE COURT'S COMMENTS ANTICIPATE.

03:07PM 3 THAT BEING SAID, TO THE EXTENT THAT THE COURT'S QUESTION  
03:07PM 4 IS HOW LIKELY IS IT THAT THERE WILL BE NONEXPERT TESTIMONY BY A  
03:07PM 5 FACT WITNESS THAT RELATES TO THIS ISSUE, I THINK WE WOULD NOT  
03:07PM 6 HAVE FILED THE MOTION IF WE DID NOT ANTICIPATE THAT THAT WAS  
03:07PM 7 LIKELY.

03:07PM 8 THE COURT: OKAY.

03:07PM 9 MR. DOWNEY: THAT BEING SAID, I THINK THAT REALLY  
03:07PM 10 LAYS OUT A PATH FOR HOW THE COURT MIGHT DEAL WITH THESE  
03:07PM 11 SEVERANCE ISSUES BECAUSE MR. BALWANI'S MOTION DEPENDS ON THE  
03:08PM 12 ARGUMENT, WHETHER TRUE OR NOT, THAT THE INTRODUCTION OF THIS  
03:08PM 13 TESTIMONY AND EVIDENCE ON THIS ISSUE WILL PREJUDICE HIM IN  
03:08PM 14 CONNECTION WITH HIS ABILITY TO GET A FAIR TRIAL.

03:08PM 15 ON THAT BASIS ALONE, I THINK THE COURT SHOULD CONSIDER,  
03:08PM 16 QUITE SIMPLY, THAT LEGAL ISSUE WITH THE ASSUMPTION THAT THERE  
03:08PM 17 IS A JUDGE TO BE A LIKELIHOOD THAT AT LEAST NONEXPERT TESTIMONY  
03:08PM 18 WILL COME IN, AS WELL AS EXPERT TESTIMONY, WHICH WILL KEY OFF  
03:08PM 19 OF THAT NONEXPERT TESTIMONY.

03:08PM 20 I'M NOT MAKING COMMENTS OBVIOUSLY ON MS. HOLMES OR HER  
03:08PM 21 TESTIMONY, AND I'M NOT IDENTIFYING THAT TESTIMONY, BUT I AM  
03:08PM 22 TELLING THE COURT THAT WE HAVE MADE SOME JUDGMENT IN THAT  
03:08PM 23 REGARD.

03:08PM 24 THE COURT: OKAY. WELL, THAT'S HELPFUL. THANK YOU.

03:08PM 25 MR. DOWNEY: NOW, LET ME COMMENT JUST BRIEFLY ON THE

03:08PM 1 QUESTION OF THE EXAM THAT HAS BEEN REQUESTED BECAUSE I THINK  
03:09PM 2 THE COURT SOUGHT SOME -- AND THE COURT DIDN'T USE THIS WORD --  
03:09PM 3 BUT PERHAPS SOME EFFICIENCY IN CONNECTION WITH THAT.

03:09PM 4 WHETHER THERE WILL BE AN EXAM OR NOT IS TRULY A PREMATURE  
03:09PM 5 QUESTION IN THIS CONTEXT. THE EXPERT'S REPORT WOULD BE  
03:09PM 6 INTRODUCED IN CONNECTION WITH INSTIGATING THE MENS REA ELEMENT  
03:09PM 7 OF THE OFFENSES THAT ARE ALLEGED.

03:09PM 8 WE'RE NOT YET AT THE POINT WHERE THE GOVERNMENT HAS REALLY  
03:09PM 9 COMPLETED SHOWING WHAT THE CASE WILL BE. WE HAVE A PENDING  
03:09PM 10 MOTION FOR BILL OF PARTICULARS. THE GOVERNMENT, AS YOU KNOW,  
03:09PM 11 IS CONTINUING TO PROVIDE RULE 16 DISCLOSURE.

03:09PM 12 WHEN THAT IS DONE, IT WILL BE APPROPRIATE FOR THE DEFENSE,  
03:09PM 13 AS IS CONTEMPLATED UNDER THE SCHEDULING ORDER, TO PREPARE ITS  
03:09PM 14 EXPERT'S REPORTS.

03:09PM 15 THE RIGHT TO AN EXAM UNDER 12.2 ARISES FROM THE RIGHT TO  
03:09PM 16 REBUT THE DEFENSE'S EXPERT REPORT, NOT FROM THE FACT THAT THE  
03:10PM 17 ISSUE IS IN THE CASE.

03:10PM 18 SO ULTIMATELY I WOULD EXPECT, YOUR HONOR, THAT WHEN WE  
03:10PM 19 FILE AN EXPERT REPORT, AND IT'S CURRENTLY SCHEDULED TO BE AT  
03:10PM 20 THE END OF APRIL, THAT THE GOVERNMENT WILL SEEK AN EXAMINATION  
03:10PM 21 FOR PURPOSES OF PREPARING THEIR REBUTTAL.

03:10PM 22 AS I SUGGESTED TO YOU, I THINK A NUMBER OF LEGAL ISSUES  
03:10PM 23 WILL ARISE WITH THAT. IT'S A COMPLEX QUESTION WHICH I WOULD --  
03:10PM 24 I THINK THE COURT WOULD WANT BRIEFING ON, BUT ALL OF THAT I  
03:10PM 25 THINK CAN BE SHORT CIRCUITED IF THE COURT JUST GRANTS

03:10PM 1 MR. BALWANI'S SEVERANCE MOTION. OF COURSE, THAT DEPENDS ON THE  
03:10PM 2 COURT'S RULING ON THAT MATTER.

03:10PM 3 THE COURT: WELL -- THANK YOU. I'LL NEED SOME BASIS  
03:10PM 4 TO GRANT HIS MOTION IF I DO THAT, AND I THINK MY COMMENTS THIS  
03:10PM 5 MORNING WERE -- THIS AFTERNOON WERE HOPING TO CAPTURE THE  
03:10PM 6 THOUGHT PROCESS INVOLVED IN THAT.

03:11PM 7 MS. BAEHR-JONES: YES, YOUR HONOR. I JUST WANT TO  
03:11PM 8 RESPOND TO THE POINT THAT THERE WOULD BE FACT TESTIMONY THAT  
03:11PM 9 WOULD PREJUDICE DEFENDANT BALWANI REGARDLESS OF THE DECISION,  
03:11PM 10 THE COURT'S DECISION ON THE 12.2 EXPERT.

03:11PM 11 I ACTUALLY THINK HERE THERE MAY NOT BE ADMISSIBLE RELEVANT  
03:11PM 12 TESTIMONY, FACT TESTIMONY IF THERE IS NOT AN EXPERT WHO SAYS  
03:11PM 13 THE DEFENDANT SUFFERED THESE MENTAL ILLNESSES, PTSD, AND THAT  
03:11PM 14 WENT TO HER MENS REA, HERE'S HOW IT AFFECTS SOMEBODY, HERE'S  
03:11PM 15 HOW IT AFFECTS SOMEONE'S MINDSET AND AFFECTS HOW THEY  
03:11PM 16 UNDERSTAND IF THEY'RE LYING AND HOW THEY UNDERSTAND RIGHT FROM  
03:11PM 17 WRONG.

03:11PM 18 ABSENT THAT TESTIMONY, THIS DOESN'T APPEAR, AT LEAST FROM  
03:11PM 19 WHAT THE GOVERNMENT HAS SEEN, AND THERE MAY BE EX PARTE  
03:11PM 20 PROFFERS THAT WE HAVE NOT SEEN, BUT FROM WHAT THE GOVERNMENT  
03:11PM 21 HAS SEEN, THIS DOESN'T APPEAR TO BE A FACT PATTERN THAT LAYS  
03:11PM 22 OUT A DRESS DEFENSE. THIS IS CONDUCT THAT HAPPENED BETWEEN THE  
03:11PM 23 TWO OF THEM THAT OTHERWISE WOULD BE COMPLETELY IRRELEVANT AND  
03:12PM 24 INADMISSIBLE AS PART OF THE DEFENSE, AS PART OF THE TRIAL.  
03:12PM 25 IT'S HIGHLY PREJUDICIAL. IT REALLY COULD CONFUSE THE JURY ON



03:12PM 1 THE RELEVANT ISSUES. IT'S NOT LIKE THE CASE THAT THEY CITE  
03:12PM 2 WHERE A DEFENDANT WAS LITERALLY SAYING YOU CAN'T GET YOUR LEG  
03:12PM 3 FIXED UNLESS YOU SIGN THESE DOCUMENTS. THAT'S NOT WHAT WE HAVE  
03:12PM 4 HERE.

03:12PM 5 SO I DO THINK THAT THIS IS NOT A CASE WHERE SIMPLY A  
03:12PM 6 PROFFER OF A FACT WITNESS WOULD SUFFICE TO MAKE THE FINAL  
03:12PM 7 DETERMINATION, A VERY CRUCIAL DETERMINATION, THAT THESE TWO  
03:12PM 8 DEFENDANTS CANNOT GO TO TRIAL TOGETHER.

03:12PM 9 THE COURT: WELL, THE SEVERANCE MOTION IS NOT REALLY  
03:12PM 10 IN FRONT OF ME RIGHT NOW AS YOU STILL HAVE TO FILE A RESPONSE,  
03:12PM 11 BUT I APPRECIATE -- AND THANK YOU ALL FOR ENGAGING IN THIS  
03:12PM 12 CONVERSATION. I THINK THIS BETTER INFORMS THE GOVERNMENT AS TO  
03:12PM 13 WHAT THEIR RESPONSE WOULD BE AND A REPLY, IF IT'S GOING TO COME  
03:12PM 14 IN, AND THE CONVERSATION THAT WE'LL HAVE ABOUT THE MOTION.

03:13PM 15 BUT I THINK THAT'S A CRITICAL -- AND YOU'VE TOUCHED ON IT.  
03:13PM 16 I THINK THERE ARE TWO CRITICAL DIFFERENCES IN TESTIMONY. A  
03:13PM 17 FACT WITNESS CAN TESTIFY THAT HE DID THIS TO ME AND LEAVE IT AT  
03:13PM 18 THAT.

03:13PM 19 AND THEN, AS COUNSEL SUGGESTS, IF THERE'S GOING TO BE SOME  
03:13PM 20 EXPERT EXPLANATION ABOUT WHAT HE DID AND HOW THAT RELATES TO  
03:13PM 21 CONDUCT, IN REGARDS TO THE ABILITY OR NOT TO FORM MENS REA,  
03:13PM 22 THAT'S AN EXPERT SITUATION.

03:13PM 23 IF A WITNESS TESTIFIES I DID IT, BUT I WOULDN'T HAVE DONE  
03:13PM 24 IT BUT FOR, THAT'S DIFFERENT. THAT'S A PURE DURESS, I GUESS  
03:13PM 25 I'LL CALL IT THAT, BUT THAT'S A MORE DURESS.

03:13PM 1 AND I -- IT'S DIFFICULT TO TALK ABOUT THESE TWO THINGS  
03:13PM 2 BECAUSE I DON'T WANT TO HAVE YOU COMMIT IN SOME WAY, BUT I WANT  
03:13PM 3 TO SHARE WITH YOU THE PROBLEM THAT THE COURT HAS AS TO WHAT IS  
03:14PM 4 IT THAT I'M GOING TO BE HEARING, AND WHAT IS IT THAT WE'RE  
03:14PM 5 LIKELY TO HEAR, BECAUSE IT'S TWO DIFFERENT ROADS, ISN'T IT?  
03:14PM 6 PERHAPS THREE.

03:14PM 7 MS. BAEHR-JONES: AND THE OTHER POINT THAT I WANTED  
03:14PM 8 TO MAKE, YOUR HONOR, ABOUT THE EXAMINATION, I THINK THERE ARE  
03:14PM 9 TWO DIFFERENT BASES FOR THE GOVERNMENT TO HAVE AN EXAMINATION  
03:14PM 10 OF THE DEFENDANT HERE BECAUSE DEFENDANT HOLMES HAS PUT HER  
03:14PM 11 MENTAL STATE AT ISSUE IN HER MOTION TO SEVER BY SAYING  
03:14PM 12 EFFECTIVELY IT'S ALMOST LIKE A COMPETENCY ISSUE. AND FRANKLY,  
03:14PM 13 IT FLAGGED FOR THE GOVERNMENT A CONCERN THAT THIS IS -- THIS  
03:14PM 14 GOES TO HER ABILITY TO RAISE A DEFENSE AT TRIAL. THAT'S PART  
03:14PM 15 OF WHAT THE EXPERT IS CONCLUDING THAT SHE'S NOT ABLE TO  
03:14PM 16 EFFECTIVELY PRESENT A DEFENSE AT TRIAL, AND WE HAVEN'T FULLY  
03:14PM 17 SORT OF THOUGHT THROUGH THE RAMIFICATIONS OF THAT IN TERMS OF  
03:14PM 18 THE RECORD, BUT IT IS LIKE A COMPETENCY CLAIM IN THAT IT RELIES  
03:14PM 19 ON THE EXPERT OPINION OF DR. MECHANIC.

03:14PM 20 AND ANY TYPE OF ISSUE THAT COMES BEFORE THE COURT THAT  
03:15PM 21 RELIES ON THE MENTAL HEALTH EXPERT, THE RULES PROVIDE FOR  
03:15PM 22 THE -- FOR A NEUTRAL OR A GOVERNMENT EXAMINATION SO THAT THE  
03:15PM 23 COURT HAS A FULL RECORD TO MAKE THAT DECISION, TO ESSENTIALLY  
03:15PM 24 MAKE A FACTUAL FINDING BASED ON THE EXPERT'S OPINION OF THE  
03:15PM 25 DEFENDANT'S STATE.

1 SO THAT'S A SEPARATE ISSUE THAT IS INTERWOVEN IN ALL OF  
2 THIS, BUT, FRANKLY, WHEN WE WERE THINKING ABOUT WHAT WE WOULD  
3 BE ASKING TO TALK TO, TO SORT OF RAISE AS ONE OF THE ISSUES  
4 DURING THE EXAMINATION, IT'S NOT JUST 12.2 ISSUES, IT'S ALSO  
5 THIS, THIS SORT OF CURRENT MENTAL STATE ISSUE OF WHETHER SHE  
6 CAN SIT NEXT TO THE DEFENDANT AT TRIAL, AND THEN TO PROTECT THE  
7 RECORD, SOME COMPETENCY QUESTIONS.

8 MR. DOWNEY: YOUR HONOR, JUST TO BE CLEAR, THIS IS  
9 NOT A COMPETENCY ISSUE. I THINK IT'S BEING ANALOGIZED TO A  
10 COMPETENCY ISSUE BECAUSE THAT'S A CONTEXT IN WHICH THE COURT  
11 WOULD ACTUALLY HAVE THE ABILITY TO ORDER AN EXAMINATION, AND  
12 I'M NOT CLEAR THAT THE GOVERNMENT WOULD.

13 BUT THERE'S NO QUESTION HERE THAT THERE'S NOTHING ABOUT  
14 THE MOTION THAT WOULD PREVENT MS. HOLMES FROM STANDING TRIAL.

15 THE QUESTION IS CAN SHE DO SO EFFECTIVELY IN THE CONTEXT  
16 OF A JOINT TRIAL?

17 I THINK THE REASON THE GOVERNMENT IS REACHING INTO THE  
18 VARIOUS SUBSECTIONS OF 12.2 TO TRY TO CREATE A RIGHT TO DO AN  
19 EXAMINATION IS THAT THERE'S A VERY LIMITED ABILITY TO DO AN  
20 EXAMINATION BECAUSE OF THE BACKDROP OF FIFTH AND SIXTH  
21 AMENDMENT ISSUES.

22 THE ONLY TIMES WHEN AN EXAMINATION CAN BE ORDERED OF A  
23 DEFENDANT, IS WHEN THERE'S AN ISSUE OF GUILT, THERE'S AN ISSUE  
24 OF WHETHER THE DEFENDANT WILL BE ABLE TO STAND TRIAL AT ALL, OR  
25 AN ISSUE AS TO PUNISHMENT.

03:16PM 1 THIS ISN'T ANY OF THOSE ISSUES.

03:16PM 2 REGARDLESS OF THE OUTCOME ON THE SEVERANCE MOTIONS, ABSENT  
03:16PM 3 THE CASE BEING DISMISSED OR THROWN OFF TRACK FOR ANOTHER  
03:17PM 4 REASON, THERE WILL BE A TRIAL. THE QUESTION IS JUST WHETHER IT  
03:17PM 5 WILL OCCUR JOINTLY.

03:17PM 6 THE COURT: WELL, THAT'S RIGHT, THAT'S WHAT THE  
03:17PM 7 SEVERANCE IS ABOUT.

03:17PM 8 SECONDARILY IS WHETHER OR NOT CERTAIN PROFFERED EVIDENCE  
03:17PM 9 WOULD BE ADMITTED BY THE COURT. I'M TALKING ABOUT DAUBERT AND  
03:17PM 10 THOSE TYPES OF THINGS WHICH STILL PRESENT.

03:17PM 11 BUT THE DECLARATION OF THE DOCTOR -- AND THE REASON I'M  
03:17PM 12 HAVING THIS DISCUSSION IS I'M NOT REALLY CLEAR ABOUT WHAT, AND  
03:17PM 13 MAYBE THIS WAS PURPOSEFUL, BUT I'M NOT REALLY CLEAR ABOUT WHAT  
03:17PM 14 SHE WILL TESTIFY TO, THE DOCTOR.

03:17PM 15 MR. DOWNEY: WELL, NOR SHOULD YOU BE FROM THE  
03:17PM 16 DECLARATION ACTUALLY, YOUR HONOR.

03:17PM 17 THE COURT: IT WAS APPROPRIATELY VAGUE.

03:17PM 18 MR. DOWNEY: NO, IT'S NOT REALLY FOR THAT REASON SO  
03:17PM 19 MUCH, YOUR HONOR, AS THE DOCTOR'S DECLARATION WAS SUBMITTED IN  
03:17PM 20 CONNECTION WITH A MOTION THAT RELATES TO MS. HOLMES'S PRESENT  
03:17PM 21 STATE OF MIND.

03:17PM 22 IT'S NOT A -- MS. HOLMES'S SEVERANCE MOTION IS REALLY  
03:17PM 23 ABOUT PRESENT STATE OF MIND ISSUES AND WHETHER THERE WOULD BE  
03:18PM 24 AN INTERFERENCE WITH HER ABILITY TO GET A FAIR TRIAL AS A  
03:18PM 25 RESULT OF A JOINT TRIAL, PARTICIPATING IN IT ON A JOINT BASIS

03:18PM 1 WITH MR. BALWANI.

03:18PM 2 THAT HAS NOTHING TO DO WITH TRIAL ISSUES. I THINK WHAT

03:18PM 3 THE COURT IS NOW ASKING IS, WELL, HOW LIKELY IS IT THAT THERE

03:18PM 4 WOULD BE EVIDENCE IN THE TRIAL THAT RELATES TO THIS ISSUE BE IT

03:18PM 5 FACT EVIDENCE, BE IT EXPERT EVIDENCE.

03:18PM 6 WHAT I AM SAYING TO THE COURT IS THAT THE THRESHOLD FOR

03:18PM 7 ADMITTING SUCH EVIDENCE IS VERY LOW WHEN THE ISSUE GOES TO

03:18PM 8 MENS REA, AND I EXPECT THAT THERE WILL BE SUCH TESTIMONY AND

03:18PM 9 THAT IT ULTIMATELY WILL BE ADMITTED.

03:18PM 10 THERE'S A CONTINUAL REFERENCE, I THINK, GIVEN THE COURT'S

03:18PM 11 COMMENT, TO A DURESS DEFENSE. THIS IS NOT AN AFFIRMATIVE

03:18PM 12 DEFENSE OF DURESS.

03:18PM 13 THIS IS A MENS REA ISSUE.

03:18PM 14 THE COURT: OKAY.

03:19PM 15 MR. DOWNEY: AND EVEN IN THE ABSENCE OF EXPERT

03:19PM 16 TESTIMONY, THE NINTH CIRCUIT HAS HELD IT ERROR NOT TO ADMIT

03:19PM 17 FACT TESTIMONY RELATED TO THESE ISSUES AS THE COURT PROBABLY

03:19PM 18 KNOWS, BUT THE CASES ARE CITED IN OUR BRIEF.

03:19PM 19 THE COURT: AND WHAT WE'RE TALKING ABOUT HERE, OR

03:19PM 20 WE'VE BEEN TALKING ABOUT THE SEVERANCE MOTION, BUT THE

03:19PM 21 CONVERSATION REALLY IS RELATED TO MR. BALWANI'S ISSUE, BECAUSE

03:19PM 22 IT IS HIS ISSUE.

03:19PM 23 YOU HAVE A DIFFERENT ISSUE.

03:19PM 24 MR. DOWNEY: THAT'S EXACTLY RIGHT.

03:19PM 25 THE COURT: YOUR ISSUE IS MY CLIENT WILL SUFFER IF

03:19PM 1 SHE -- BECAUSE OF ALL OF THESE THINGS, SHE WILL SUFFER AND SHE  
03:19PM 2 CANNOT POSSIBLY SIT IN THE COURTROOM WITH HER CODEFENDANT IN  
03:19PM 3 THIS CASE, THEREFORE, HER SIXTH AND FIFTH AMENDMENT  
03:19PM 4 CONSTITUTIONAL RIGHTS ARE IMPINGED. THAT'S YOUR MOTION.

03:19PM 5 HIS MOTION IS VERY DIFFERENT. HE IS ANTICIPATING FACT  
03:19PM 6 TESTIMONY PERHAPS THAT IS CONCURRENT WITH WHAT YOUR EXPERT HAS  
03:19PM 7 SAID. AND HE SAYS I CAN'T POSSIBLY DEFEND AGAINST THAT AND  
03:20PM 8 DEFEND AGAINST THE GOVERNMENT'S CASE, THAT'S UNFAIR, THAT'S  
03:20PM 9 PREJUDICE. AND EVERYTHING THAT THE GOVERNMENT PUTS AGAINST THE  
03:20PM 10 DEFENDANT IS TYPICALLY PREJUDICIAL TO THEIR INTEREST, BUT HE  
03:20PM 11 SAYS THIS IS UNFAIR PREJUDICE.

03:20PM 12 MR. DOWNEY: THAT'S RIGHT.

03:20PM 13 THE COURT: AND IT SHOULDN'T BE PERMITTED.

03:20PM 14 MR. DOWNEY: I THINK THAT'S RIGHT, YOUR HONOR. THE  
03:20PM 15 ONLY REASON I'M REALLY COMMENTING ON ALL OF THIS IS TWOFOLD.

03:20PM 16 ONE IS THAT I THINK THE COURT UNDERSTANDABLY WAS MAKING  
03:20PM 17 AN INQUIRY ABOUT LIKELIHOOD. THAT'S NUMBER ONE.

03:20PM 18 NUMBER TWO, OF COURSE ULTIMATELY THE ISSUE IS WOULD SUCH  
03:20PM 19 EVIDENCE BE ADMITTED AT A TRIAL? IT'S DIFFICULT TO MAKE ANY  
03:20PM 20 KIND OF FINAL JUDGMENT WITH RESPECT TO THAT.

03:20PM 21 THE COURT: TODAY.

03:20PM 22 MR. DOWNEY: NEEDLESS TO SAY TODAY.

03:20PM 23 BUT -- SO I'M JUST COMMENTING THAT I ANTICIPATE IT WILL BE  
03:20PM 24 ADMITTED AND THAT THERE ARE SOUND BASES IN THE LAW FOR IT TO BE  
03:20PM 25 ADMITTED.

03:20PM 1 AND BASED ON OUR PRESENT EXPECTATION, IT WOULD BE ADMITTED  
03:20PM 2 IN CONNECTION WITH REBUTTING OR RESPONDING TO THE MENS REA  
03:21PM 3 ELEMENT.

03:21PM 4 THE COURT: OKAY. WELL, THANK YOU. THAT'S HELPFUL.  
03:21PM 5 I APPRECIATE THE ASSISTANCE.

03:21PM 6 LET ME, LET ME TURN TO MR. CAZARES OR MR. COOPERSMITH,  
03:21PM 7 WHOEVER WOULD LIKE TO SPEAK.

03:21PM 8 AGAIN, THE MOTIONS -- I'M NOT HEARING THE MOTIONS NOW.  
03:21PM 9 THIS IS BACKGROUND FOR THE MOTIONS, BUT IT'S HELPFUL, AND I  
03:21PM 10 APPRECIATE YOUR CANDOR HERE BECAUSE THE GOVERNMENT -- I'M GOING  
03:21PM 11 TO GET AN OPPOSITION, I EXPECT, FROM THE -- MAYBE THEY'LL  
03:21PM 12 CONCEDE THE MOTION -- BUT I EXPECT I WILL GET AN OPPOSITION  
03:21PM 13 FROM THEM.

03:21PM 14 LET ME SAY THAT I'M GOING TO GIVE YOU ADDITIONAL TIME.  
03:21PM 15 YOU'RE NOT GOING TO HAVE TO FILE IT THIS AFTERNOON. I AM GOING  
03:21PM 16 TO GIVE THEM ADDITIONAL TIME, AND I THINK THAT'S ONLY FAIR  
03:21PM 17 GIVEN THE CONTEXT OF OUR CONVERSATION HERE.

03:21PM 18 MS. BAEHR-JONES: YOUR HONOR, TO THAT POINT, IF I  
03:21PM 19 MAY.

03:21PM 20 SO WHAT WE HAVE RIGHT NOW ON THE 12.2 NOTICE DOES NOT IN  
03:21PM 21 FACT SAY THAT THE EXPERT IS GOING TO TESTIFY.

03:21PM 22 THE COURT: RIGHT.

03:21PM 23 MS. BAEHR-JONES: SO I THINK EVEN IF YOUR HONOR IS  
03:21PM 24 NOT INCLINED TO GO WITH THE GOVERNMENT'S PROPOSED SCHEDULE, IT  
03:21PM 25 WOULD BE VERY DIFFICULT TO WRITE AN OPPOSITION TO THIS MOTION

03:21PM 1 WITH THE AMOUNT OF FACTS THAT WE HAVE RIGHT NOW. WE DON'T HAVE  
03:22PM 2 THE EXPERT'S REPORT ABOUT WHAT SHE'S GOING TO SAY.

03:22PM 3 THE COURT: PARDON ME. LET ME INTERRUPT YOU. I'M  
03:22PM 4 TALKING ABOUT A RESPONSE TO THE CODEFENDANT, MR. BALWANI'S  
03:22PM 5 MOTION.

03:22PM 6 MS. BAEHR-JONES: BUT STILL, WE DON'T -- TO RESPOND  
03:22PM 7 TO HIS MOTION WE WOULD HAVE TO TALK ABOUT PREJUDICE, AND SINCE  
03:22PM 8 WE DON'T KNOW WHAT THE EXPERT TESTIMONY IS EVEN GOING TO LOOK  
03:22PM 9 LIKE, IT WOULD BE ALMOST IMPOSSIBLE TO RESPOND TO HOW MUCH  
03:22PM 10 PREJUDICE THERE WOULD BE TO DEFENDANT BALWANI. EVEN IF THE  
03:22PM 11 COURT IS NOT INCLINED TO GO WITH THIS SCHEDULE, THE GOVERNMENT  
03:22PM 12 WOULD URGE FOR THE DEFENDANTS TO PROVIDE ADDITIONAL INFORMATION  
03:22PM 13 LIKE THE SUMMARY REPORT OF THE 12.2 EXPERT SO WE CAN AT LEAST,  
03:22PM 14 BASED ON THAT INFORMATION, MAKE OUR ARGUMENTS IN OPPOSITION.

03:22PM 15 THE COURT: SURE. WELL, LET'S HERE WHAT MR. BALWANI  
03:22PM 16 HAS TO SAY.

03:22PM 17 MR. CAZARES: THANK YOU, YOUR HONOR.  
03:22PM 18 STEPHEN CAZARES FOR MR. BALWANI.

03:22PM 19 YOUR HONOR, WE APPRECIATE THE POSITION THAT THE COURT IS  
03:22PM 20 IN AND BEING ASKED TO MAKE THESE DECISIONS AT THIS TIME WHILE  
03:23PM 21 THERE'S SO MANY KIND OF BALLS UP IN THE AIR AND IT'S NOT CLEAR  
03:23PM 22 WHERE THEY'RE ALL GOING TO LAND.

03:23PM 23 BUT THE PROBLEM IS FOR US, FOR MR. BALWANI AND HIS CASE  
03:23PM 24 AND HIS ARGUMENTS FOR SEVERANCE AND THE PREJUDICE THAT HE  
03:23PM 25 BELIEVES HE WOULD FACE, IF ANY ONE OF THOSE KIND OF EVIDENTIARY



03:23PM 1 BALLS IN THE AIR THAT THE HOLMES TEAM IS GOING TO SEEK TO ADMIT  
03:23PM 2 INTO TRIAL, ANY OF IT THAT GETS INTO EVIDENCE AND IT'S  
03:23PM 3 EXTREMELY PREJUDICIAL, ANY OF IT THAT GETS INTO EVIDENCE, IT  
03:23PM 4 OTHERWISE WOULD BE 403 AND ADMISSIBLE CHARACTER EVIDENCE, AND  
03:23PM 5 LIKELY IT WOULD RESULT IN SOME SORT OF A MISTRIAL.

03:23PM 6 FOR US IT'S NOT JUST A MATTER OF, WELL, MAYBE THE  
03:23PM 7 GOVERNMENT WILL SUCCEED AND RAISE SOME SORT OF EVIDENTIARY  
03:23PM 8 ISSUE FOR THE JURY IN A BATTLE OF EXPERTS. MAYBE THEY'LL BE  
03:23PM 9 LUCKY ENOUGH TO KEEP THE EXPERT TESTIMONY OUT. MAYBE  
03:23PM 10 MS. HOLMES WILL OR WON'T TESTIFY.

03:23PM 11 IT SOUNDS TO ME LIKE THE HOLMES DEFENSE TEAM INTENDS TO  
03:24PM 12 PRESENT SOME EVIDENCE OF SOME SORT OF ABUSE ALLEGATIONS, TO  
03:24PM 13 SUPPORT ABUSE ALLEGATIONS, AND WHETHER OR NOT THE EVIDENCE  
03:24PM 14 AFFIRMATIVELY PROVES THE ALLEGATION ON ITS OWN SOLELY. AS LONG  
03:24PM 15 AS IT'S SOME EVIDENCE.

03:24PM 16 YOU KNOW, THE HOLMES TEAM, I WOULD THINK, WOULD BE MAKING  
03:24PM 17 ARGUMENTS TO THE EXTENT THAT THERE ARE REASONABLE INFERENCES  
03:24PM 18 FROM THAT SORT OF EVIDENCE. [REDACTED]

03:24PM 19 [REDACTED]

03:24PM 20 [REDACTED]

03:24PM 21 [REDACTED]

03:24PM 22 [REDACTED]

03:24PM 23 [REDACTED]

03:24PM 24 [REDACTED]

03:24PM 25 [REDACTED]

03:24PM 1 AND TO THE EXTENT THAT ANY OF THAT EVIDENCE GETS INTO THE  
03:24PM 2 TRIAL, WE'RE IN THE SAME POSITION. WHETHER OR NOT IT'S ALL OR  
03:24PM 3 JUST A LITTLE BIT, YOU KNOW, INCH FOR AN INCH AND INCH FOR A  
03:25PM 4 MILE FOR US.

03:25PM 5 THE COURT: WELL, YOU KNOW, I UNDERSTAND THAT, BUT  
03:25PM 6 IN TRIALS, YOU'VE PROBABLY BEEN INVOLVED IN THEM, AND THERE ARE  
03:25PM 7 CODEFENDANT CASES AND SOMEBODY SAYS, WELL, YOU KNOW, I NEVER  
03:25PM 8 REALLY LIKED HIM OR HER AND I ALWAYS THOUGHT THEY WERE A BAD  
03:25PM 9 INFLUENCE ON THEM.

03:25PM 10 OH REALLY? WHY IS THAT? WELL, YOU KNOW, HE USED TO DO  
03:25PM 11 THIS. HE WAS VERY JEALOUS, AND HE NEVER LET HER TALK TO  
03:25PM 12 WAITERS WHEN WE WOULD GO TO A RESTAURANT, AND HE WAS ALWAYS  
03:25PM 13 JEALOUS, AND THOSE TYPES OF THINGS.

03:25PM 14 WELL, THAT COMES IN AND THAT'S NOT NECESSARILY  
03:25PM 15 PREJUDICIAL. IT'S JUST SOMEBODY COMMENTING ON THEIR  
03:25PM 16 OBSERVATIONS.

03:25PM 17 I BELIEVE I READ IN THE DECLARATIONS IT SOUNDS LIKE THERE  
03:25PM 18 MIGHT BE THIRD PARTY EVIDENCE OFFERED BY MS. HOLMES, HER TEAM,  
03:25PM 19 AS TO OBSERVATIONS ABOUT CONDUCT, AND THAT'S DILUTED, I  
03:25PM 20 SUPPOSE, IF SHE DOESN'T TESTIFY.

03:25PM 21 BUT THIRD PARTY EVIDENCE IS AFFORDED, WELL, I SAW THIS,  
03:25PM 22 NOT SHE TOLD ME, BUT I SAW THIS.

03:26PM 23 AND WHAT DID THAT LOOK LIKE? WELL, IT LOOKED LIKE  
03:26PM 24 WHATEVER.

03:26PM 25 THAT'S REMOVED FROM A WITNESS SAYING HE DID THIS TO ME.

03:26PM 1 MR. CAZARES: BUT THAT'S MY POINT, YOUR HONOR.  
03:26PM 2 THERE'S THE INFERENTIAL LINK, AND ANYBODY WHO HAS BEEN IN TRIAL  
03:26PM 3 OR BEEN A TRIAL LAWYER OR A JUDGE, FACING TRIAL AND MAKING  
03:26PM 4 DECISIONS BASED ON COUNSEL ARGUMENT, THERE'S A REASONABLE BASIS  
03:26PM 5 FOR A DEFENSE LAWYER TO MAKE AN ARGUMENT BASED ON FACTS AND  
03:26PM 6 EVIDENCE, EVEN IF THOSE FACTS DON'T DISPOSITIVELY PROVE THE END  
03:26PM 7 GAME, TYPICALLY THEY GET TO MAKE IT.

03:26PM 8 THE COURT: OF COURSE.

03:26PM 9 MR. CAZARES: SO TO THE EXTENT THAT THESE SOMEWHAT  
03:26PM 10 INNOCUOUS FACTS RELATING TO THIRD PARTY OBSERVATIONS DON'T  
03:26PM 11 PROVE ON THEIR OWN THE ABUSE ALLEGATIONS, AND THEORETICALLY --  
03:26PM 12 AGAIN, I'M NOT PRIVY TO WHAT THE HOLMES TEAM HAS SUBMITTED IN  
03:26PM 13 CAMERA AND WHAT THEY ULTIMATELY PLAN TO ARGUE, BUT I SUSPECT AT  
03:26PM 14 SOME LEVEL IT MAY BE THAT MR. BALWANI CAUSED HER TO DO THINGS  
03:26PM 15 AND MAKE DECISIONS THAT SHE DIDN'T INTEND TO.

03:26PM 16 THE COURT: HAVE YOU SEEN THE REPORT?

03:27PM 17 MR. CAZARES: I HAVE NOT.

03:27PM 18 THE COURT: I SEE. OKAY.

03:27PM 19 MR. CAZARES: I HAVE NOT. I'M PURELY GUESSING AND  
03:27PM 20 SPECULATING RIGHT NOW, BUT I'VE BEEN AROUND LONG ENOUGH TO  
03:27PM 21 IMAGINE WHAT SOME OF THE ARGUMENT MAY BE EVEN IF THE EXPERT  
03:27PM 22 TESTIMONY AND/OR MS. HOLMES DOESN'T TESTIFY.

03:27PM 23 THE COURT: YOU'VE SEEN THE REPORT?

03:27PM 24 MR. LEACH: YOUR HONOR, I THINK THERE MAY BE A  
03:27PM 25 DISCONNECT HERE. I BELIEVE THE DECLARATION OF DR. MECHANIC HAS

03:27PM 1 BEEN SERVED ON MR. BALWANI.

03:27PM 2 THE COURT: I SAID REPORT. IT'S NOT A REPORT, IT'S  
03:27PM 3 A DECLARATION. YOU'VE SEEN THE DECLARATION?

03:27PM 4 MR. CAZARES: THE DECLARATION. WE'VE SEEN THE  
03:27PM 5 DECLARATION, AND OBVIOUSLY WE HAVE JUMPED TO OUR OWN INFERENCES  
03:27PM 6 AND CONCLUSIONS BASED ON THAT. WE HAVE NOT SEEN ANY UNDERLYING  
03:27PM 7 REPORT.

03:27PM 8 THE COURT: I'M NOT CERTAIN WHETHER ONE HAS BEEN  
03:27PM 9 PREPARED YET BASED ON COMMENTS.

03:27PM 10 MY POINT IN TALKING ABOUT THIS IS THIRD PARTY OBSERVATIONS  
03:27PM 11 ARE DIFFERENT THAN FIRST PARTY EXPERIENCES. IT CAUSES A BIT OF  
03:27PM 12 A DILUTION, IF YOU WILL, OF THE PREJUDICIAL FACT PERHAPS.

03:28PM 13 MR. CAZARES: IT COULD BE A WEIGHT ISSUE, YOUR  
03:28PM 14 HONOR.

03:28PM 15 THE COURT: RIGHT. EXACTLY.

03:28PM 16 MR. CAZARES: IS IT AS SIGNIFICANT AS A FIRST PERSON  
03:28PM 17 OBSERVATION? BUT STILL EVIDENCE NONETHELESS.

03:28PM 18 THE COURT: SO YOU FILED YOUR MOTION FIRST, AND YOU  
03:28PM 19 DID NOT HAVE BENEFIT OF THE DECLARATION. AND MS. BAEHR-JONES  
03:28PM 20 WOULD LIKE ME TO CONTINUE TO REFER TO THAT AS THE UNSWORN  
03:28PM 21 DECLARATION.

03:28PM 22 YOU DID NOT HAVE BENEFIT OF THAT, AND I'M CURIOUS NOW AS I  
03:28PM 23 LOOK AT THIS, AND I ANTICIPATE THE OPPOSITION, I'M CURIOUS IF I  
03:28PM 24 SHOULD ALLOW YOU TO AUGMENT YOUR MOTION BASED ON WHAT YOU'VE  
03:28PM 25 HEARD NOW FROM YOUR CODEFENDANT'S LAWYER AND HAVE THE

03:28PM 1 GOVERNMENT RESPOND BASED ON THAT AS WELL.

03:28PM 2 MR. CAZARES: YOUR HONOR, THERE MAY BE SOME AREAS

03:28PM 3 WHERE WE MAY WANT TO SUPPLEMENT. I'M NOT SURE THE

03:28PM 4 DECLARATION -- WHILE IT DID ADD SOME MEAT TO THE BONES OF THE

03:28PM 5 12.2 LETTER I WOULD SUPPOSE, AND WE COULD REFER TO IT AT LEAST

03:28PM 6 FOR OUR OWN RECORD, I MEAN, I COULD CONSULT WITH

03:29PM 7 MR. COOPERSMITH, BUT TO THE EXTENT THAT THE COURT IS GOING TO

03:29PM 8 MAYBE NOT ADOPT THE GOVERNMENT'S PROPOSED SEVERANCE KIND OF

03:29PM 9 CALENDAR BUT SOME SORT OF MODIFIED TO GIVE THE GOVERNMENT MORE

03:29PM 10 TIME, WE WOULD LIKE A CHANCE TO REVISIT AND DETERMINE WHETHER

03:29PM 11 OR NOT WE MIGHT WANT TO ADD OR SUPPLEMENT OR THE ANSWER MAY BE

03:29PM 12 SIMPLY GIVE US GREATER LEEWAY ON A REPLY TO ADDRESS ISSUES THAT

03:29PM 13 MAYBE WE DIDN'T RAISE IN OUR INITIAL MOTION SO THAT WE CAN AT

03:29PM 14 LEAST PRESENT A COMPLETE ARGUMENT AND PRESENTATION TO THE

03:29PM 15 COURT.

03:29PM 16 THE COURT: SURE. MS. BAEHR-JONES.

03:29PM 17 MS. BAEHR-JONES: YOUR HONOR, JUST BECAUSE I DO

03:29PM 18 THINK THAT THE DECLARATION OF DR. MECHANIC IS IMPORTANT, BUT

03:29PM 19 WHAT IS EQUALLY IMPORTANT IS WHAT IS NOT THERE. [REDACTED]

03:29PM 20 [REDACTED]

03:29PM 21 [REDACTED]

03:29PM 22 [REDACTED]

03:29PM 23 AND I JUST DON'T UNDERSTAND AT THIS POINT WHY THE

03:29PM 24 GOVERNMENT CAN'T BE PROVIDED WITH THAT. IT COULD BE A SHORT

03:30PM 25 SUMMARY. IT DOESN'T NEED TO BE THE COMPLETE DISCLOSURE, BUT

03:30PM 1 BECAUSE THIS IS SO CRITICAL TO WHAT DEFENDANT BALWANI IS  
03:30PM 2 ARGUING, AND BECAUSE THE COURT IS CLEARLY INTERESTED IN  
03:30PM 3 SUPPLEMENTAL ARGUMENT ABOUT THIS VERY ISSUE, THIS IS -- THESE  
03:30PM 4 EVALUATIONS HAPPENED IN AUGUST, AND THERE WAS 14 OR 16 HOURS OF  
03:30PM 5 EVALUATIONS. SO THE GOVERNMENT WOULD JUST LIKE TO BE ABLE TO  
03:30PM 6 BRIEF THAT FOR THE COURT.

03:30PM 7 THE COURT: WELL, THAT THEN GETS ME BACK TO  
03:30PM 8 MR. DOWNEY THEN AND ASKING HIM ABOUT HIS EXPERT AND WHETHER OR  
03:30PM 9 NOT -- AND IT'S KIND OF AN AWKWARD SITUATION HERE BECAUSE CAN  
03:30PM 10 YOU GET YOUR EXPERT TO WRITE SOMETHING THAT MIGHT GIVE US MORE  
03:30PM 11 GUIDANCE FOR HIS MOTION, FOR MR. BALWANI'S MOTION?

03:30PM 12 MR. DOWNEY: YOU KNOW, YOUR HONOR, JUST TO SEPARATE  
03:30PM 13 OUT A FEW THINGS AND TO BE FAIR TO MR. CAZARES'S COMMENTS, TO  
03:30PM 14 RETURN TO BASICS, THE DECLARATION IS ABOUT PRESENT STATE OF  
03:30PM 15 MIND. IT'S NOT REALLY ABOUT THE FACTS OF THE UNDERLYING  
03:31PM 16 ALLEGED OFFENSES.

03:31PM 17 I THINK THAT WE CANNOT PREPARE AN EXPERT REPORT UNTIL THE  
03:31PM 18 CONCLUSION OF THE GOVERNMENT'S COMPLIANCE WITH RULE 16, WHICH  
03:31PM 19 IS RESPONSIVE TO THAT, AND WE'RE ALSO HOPEFUL OF GETTING MORE  
03:31PM 20 DETAIL ABOUT THE CRIMINAL CHARGES.

03:31PM 21 THE COURT: WHAT IS IT YOU EXPECT THEM TO GIVE YOU  
03:31PM 22 THAT WOULD BE HELPFUL TO THE PREPARATION OF THE REPORT?

03:31PM 23 MR. DOWNEY: WELL, ON EVERY SINGLE ISSUE WE ARE  
03:31PM 24 AWARE OF ISSUES THAT MIGHT IMPLICATE THIS ASPECT TO THE  
03:31PM 25 MENS REA DEFENSE, BUT WE DON'T KNOW THAT FOR SURE.

03:31PM 1 SO WE WERE IN COURT TODAY TALKING ABOUT THE FDA ISSUES.

03:31PM 2 THERE COULD BE ISSUES THERE.

03:31PM 3 THERE ARE ADDITIONAL DISCLOSURES OF STATEMENTS COMING IN  
03:31PM 4 EARLY FEBRUARY. THAT'S LIKELY TO IMPLICATE A NEED TO RESPOND.

03:31PM 5 MOST FUNDAMENTALLY, THE GOVERNMENT IS GOING TO GIVE US  
03:31PM 6 THEIR EXPERT REPORTS, AND OBVIOUSLY THE MENS REA REPORT WE'LL  
03:32PM 7 HAVE TO RESPOND TO THOSE ELEMENTS OF THE GOVERNMENT'S  
03:32PM 8 PRESENTATION.

03:32PM 9 SO I DON'T THINK IT'S, AS I UNDERSTAND --

03:32PM 10 THE COURT: LET ME STOP YOU THERE AND JUST -- DO YOU  
03:32PM 11 HAVE EXPERT REPORTS THAT ARE PENDING?

03:32PM 12 MR. LEACH: THERE'S AN EXPERT DEADLINE, YOUR HONOR,  
03:32PM 13 BUT IT WAS NOT THE GOVERNMENT'S INTENTION TO PUT FORTH EXPERT  
03:32PM 14 TESTIMONY ON THE DEFENDANT'S MENTAL STATE.

03:32PM 15 THE COURT: IS THAT WHAT YOU'RE TALKING ABOUT?

03:32PM 16 MR. DOWNEY: NO. NO, YOUR HONOR. I'M SAYING WE  
03:32PM 17 WANT TO KNOW THE ENTIRETY OF THE GOVERNMENT'S CASE BEFORE WE  
03:32PM 18 HAVE AN EXPERT SUBMIT A RELIABLE REPORT.

03:32PM 19 WHAT IS HAPPENING HERE, WHICH IS VERY UNCONVENTIONAL, IS  
03:32PM 20 FOR US TO STATE OUR DEFENSE.

03:32PM 21 THE COURT: I'M NOT ASKING YOU, PLEASE REMEMBER  
03:32PM 22 THAT.

03:32PM 23 I TALKED AT A HIGH LEVEL. I SAID -- BECAUSE I WANTED TO  
03:32PM 24 SHARE WITH YOU THE THOUGHT PROCESS OF THIS UNIQUE SITUATION  
03:32PM 25 WHERE THE CODEFENDANT'S MOTION TO SEVER BASED ON YOUR CLIENT'S

03:32PM 1 PROPOSED POTENTIAL EXPECTED TESTIMONY AND HOW THAT INTERACTS  
03:32PM 2 AND THE DIFFICULTY THAT THIS COURT HAS MAKING A DECISION ON THE  
03:33PM 3 SEVERANCE MOTION WHEN IT HAS, WELL, MAYBE POSSIBLY, MAYBE, IT  
03:33PM 4 MIGHT, MAY. THAT'S THE DIFFICULTY.

03:33PM 5 AND PARTICULARLY, LET ME JUST SAY THIS, TOO, THE  
03:33PM 6 DECLARATION IN SUPPORT THAT YOU FILED FROM THE DOCTOR IN  
03:33PM 7 SUPPORT OF YOUR MOTION TO SEVER, IT TALKS ABOUT CERTAIN  
03:33PM 8 ASPECTS, AND I'M JUST CURIOUS IF YOUR DOCTOR WOULD, IF YOUR  
03:33PM 9 DOCTOR WOULD AT A MINIMUM SIGN A DECLARATION UNDER PENALTY OF  
03:33PM 10 PERJURY OR WHATEVER, AUTHOR A DECLARATION ABOUT HER FINDINGS,  
03:33PM 11 LIKE WE TYPICALLY FIND WITH REPORT TYPE SIGNATURES.

03:33PM 12 MR. DOWNEY: OUR EXPECTATION IS THAT A REPORT WILL  
03:33PM 13 BE PREPARED WHICH COVERS THESE ISSUES AS THEY RELATE TO THE  
03:33PM 14 GOVERNMENT'S CASE. WE DON'T YET KNOW THE TOTALITY OF THAT CASE  
03:34PM 15 AND WHEN WE DO, SHE WILL.

03:34PM 16 I CAN'T MAKE ANY COMMITMENT AHEAD OF THAT.

03:34PM 17 THE COURT: WELL, I'M TALKING ABOUT JUST WITH HER  
03:34PM 18 DECLARATION. WAS SHE WILLING TO SIGN THAT?

03:34PM 19 MR. DOWNEY: CERTAINLY, YOUR HONOR, YES.

03:34PM 20 THE COURT: SO THE COURT WOULD AT LEAST HAVE THAT?

03:34PM 21 MS. BAEHR-JONES: YOUR HONOR, IF SHE IS GOING TO DO  
03:34PM 22 THAT, THE GOVERNMENT WOULD JUST ASK THAT SHE INCLUDE A  
03:34PM 23 PARAGRAPH ABOUT HER OPINIONS ON 12.2, ABOUT MENS REA, AND THE  
03:34PM 24 FACT THAT THE PTSD, THE ANXIETY AND DEPRESSION COULD SERVE AS A  
03:34PM 25 PARTIAL, A MENTAL DEFECT OR A MENTAL CONDITION.



03:34PM 1 THE COURT: DID SHE SAY THAT IN HER DECLARATION?

03:34PM 2 MR. DOWNEY: NO.

03:34PM 3 MS. BAEHR-JONES: SHE DID NOT.

03:34PM 4 MR. DOWNEY: I THINK THE QUESTION IS WHETHER --  
03:34PM 5 THERE REALLY ARE TWO DIFFERENT ISSUES AND 12.2 KEEPS GETTING  
03:34PM 6 REFERRED TO IN THIS CONTEXT, BUT IT'S NOT REALLY APPLICABLE.

03:34PM 7 THE 12.2 REPORT, WHICH HAS AN OBLIGATION TO RESPOND TO THE  
03:34PM 8 GOVERNMENT'S CASE, IS PREPARED IN RESPONSE TO THE  
03:34PM 9 GOVERNMENT'S -- THE CONCLUSION OF THE GOVERNMENT'S CASE AT THE  
03:35PM 10 DEADLINE OF THE EXPERT REPORTS.

03:35PM 11 THE GOVERNMENT THEN HAS A RIGHT TO ASK FOR WHAT IT IS NOW  
03:35PM 12 ASKING FOR PREMATURELY, A RIGHT TO EXAMINE THE DEFENDANT, TO  
03:35PM 13 PREPARE A REPORT, ET CETERA.

03:35PM 14 WE'RE JUST AHEAD OF THAT IN TERMS OF WHERE WE ARE IN THE  
03:35PM 15 CASE.

03:35PM 16 BUT THE -- YOU KNOW, THE MORE FUNDAMENTAL POINT, YOUR  
03:35PM 17 HONOR, I THINK IS I DON'T THINK OUR PRESENTATION TODAY, AND I  
03:35PM 18 KNOW THE COURT WAS NOT MAKING A JUDGMENT IN THIS REGARD, I  
03:35PM 19 DON'T THINK THE -- OUR PRESENTATION SHOULD BE HEARD AS SAYING  
03:35PM 20 THIS IS A SPECULATIVE PRESENTATION. THIS IS A LIKELY  
03:35PM 21 PRESENTATION AT TRIAL.

03:35PM 22 THE COURT: OKAY.

03:35PM 23 MR. DOWNEY: IF THERE IS A DEFENSE CASE.

03:35PM 24 MR. COOPERSMITH: YOUR HONOR, THIS IS  
03:35PM 25 JEFF COOPERSMITH. COULD I BE HEARD FOR A FEW MINUTES?

03:35PM 1 THE COURT: YES.

03:35PM 2 MR. COOPERSMITH: THANK YOU VERY MUCH. SO FIRST OF  
03:35PM 3 ALL, WE'RE OBVIOUSLY TODAY NOT ARGUING THE QUESTION OF  
03:35PM 4 SEVERANCE. THAT, AS YOU SAID, YOUR HONOR, WE HAVE NOT EVEN  
03:35PM 5 RECEIVED THE GOVERNMENT'S OPPOSITION.

03:35PM 6 THE COURT: WE'RE DANCING PRETTY CLOSE TO IT,  
03:35PM 7 MR. COOPERSMITH, BUT YOU'RE RIGHT, THE MOTION IS NOT BEFORE THE  
03:36PM 8 COURT NOW, BUT THIS IS FOUNDATIONAL INFORMATION FOR THE MOTION,  
03:36PM 9 AND I APPRECIATE YOUR ATTENTION TO IT.

03:36PM 10 MR. COOPERSMITH: YES. THANK YOU, YOUR HONOR.

03:36PM 11 SO FIRST OF ALL, WE HAVE A TOTALLY DIFFERENT ISSUE AS I  
03:36PM 12 SEE IT THAN MS. HOLMES.

03:36PM 13 AS MR. DOWNEY COMMENTED, MS. HOLMES'S ISSUE APPARENTLY IS  
03:36PM 14 THAT SHE BELIEVES THAT SHE CAN'T PARTICIPATE IN THE JOINT TRIAL  
03:36PM 15 BECAUSE OF HER PRESENT MENTAL STATE, AS MR. DOWNEY SAID.

03:36PM 16 MR. BALWANI'S MOTION IS COMPLETELY DIFFERENT.  
03:36PM 17 MR. BALWANI'S MOTION FOR SEVERANCE IS SIMPLY THAT BECAUSE OF  
03:36PM 18 THE DEFENSE THAT MS. HOLMES HAS NOW NOTICED UNDER 12.2, ANY  
03:36PM 19 EVIDENCE, AS MR. CAZARES SAID, ANY EVIDENCE THAT COMES IN ABOUT  
03:36PM 20 THIS ALLEGED ABUSE IS SO DEEPLY PREJUDICIAL TO MR. BALWANI THAT  
03:36PM 21 HE CAN'T POSSIBLY HAVE A FAIR TRIAL, AND IT DOESN'T MATTER  
03:36PM 22 WHETHER THAT EVIDENCE COMES IN, IN THE FORM OF FACT WITNESS  
03:36PM 23 TESTIMONY FROM THIRD PARTIES, FROM MS. HOLMES HERSELF, OR FROM  
03:36PM 24 EXPERT TESTIMONY, OR ALL OF THOSE THINGS, WHICH IS WHAT I  
03:36PM 25 SUSPECT WOULD HAPPEN.

03:37PM 1 IN TERMS OF THE TIMING OF RULING ON THE SEVERANCE, AS THE  
03:37PM 2 COURT HAS NOTED, THE GOVERNMENT'S OPPOSITION IS ACTUALLY DUE  
03:37PM 3 TODAY, AND I APPRECIATE THEY MAY GET A LITTLE MORE TIME.

03:37PM 4 WE NEED TO GET THAT FULLY BRIEFED SO WE CAN ARGUE THE  
03:37PM 5 MERITS OF THE SEVERANCE FROM MR. BALWANI'S STANDPOINT FOR AT  
03:37PM 6 LEAST THREE REASONS.

03:37PM 7 FIRST OF ALL, IF WE DON'T GET A RULING ON SEVERANCE NOW,  
03:37PM 8 AND THE COURT HAS SUGGESTED GETTING AN EARLIER RULING WOULD BE  
03:37PM 9 HELPFUL, WE'RE GOING TO BE IN THE DARK ABOUT WHAT EXACTLY WE'RE  
03:37PM 10 FACING AT TRIAL, WHICH WE'VE TRIED TO DO EVERYTHING WE CAN TO  
03:37PM 11 KEEP ON THE CURRENT SCHEDULE AT LEAST FOR MR. BALWANI'S TRIAL  
03:37PM 12 OF JULY 28TH FOR JURY SELECTION.

03:37PM 13 IN ADDITION, IF WE DON'T GET A RULING, NOT ONLY WILL WE BE  
03:37PM 14 IN THE DARK, BUT WE WON'T BE ABLE TO PREPARE FOR TRIAL BECAUSE  
03:37PM 15 THERE'S A VERY DIFFERENT SET OF PREPARATION THAT GOES INTO A  
03:37PM 16 JOINT TRIAL WHEN YOU WORK WITH CODEFENDANT COUNSEL TO FIGURE  
03:37PM 17 OUT WHO TAKES THE LEAD ON WITNESSES, AND THERE WILL BE MANY  
03:38PM 18 WITNESSES IN THIS TRIAL VERSUS HAVING TO DO IT AS JUST ONE  
03:38PM 19 DEFENDANT. VERY DIFFERENT.

03:38PM 20 AND THEN IN ADDITION, WE WOULD NOT KNOW UNDER THE  
03:38PM 21 GOVERNMENT'S PROPOSED SCHEDULE FOR RULING ON SEVERANCE, WHICH  
03:38PM 22 DEPENDS ON MANY, MANY MONTHS OF BACK AND FORTH WITH MR. --  
03:38PM 23 MS. HOLMES'S COUNSEL, WE WOULD NOT KNOW WHETHER WE'RE GOING TO  
03:38PM 24 HAVE A JOINT TRIAL OR NOT UNTIL AND IN THE GOVERNMENT'S  
03:38PM 25 SCHEDULE UNTIL SOMETHING LIKE JUNE.

03:38PM 1 AND THE PROBLEM WOULD BE THAT WE HAVE TO CONDUCT AN  
03:38PM 2 EXTENSIVE AND EXPENSIVE INVESTIGATION INTO THESE OTHER  
03:38PM 3 ALLEGATIONS. SO WE WOULD HAVE TO BE PREPARED FOR DEALING WITH  
03:38PM 4 THE ALLEGATIONS FROM MS. HOLMES ABOUT THE ALLEGED ABUSE AS WELL  
03:38PM 5 AS THE FRAUD CASES THAT THE GOVERNMENT HAS BROUGHT.

03:38PM 6 SO ALL OF THOSE THINGS CREATE SUCH DEEP PREJUDICE THAT WE  
03:38PM 7 THINK THERE HAS TO BE A RULING NOW.

03:38PM 8 AND THEN THE QUESTION IS, AS MS. BAEHR-JONES HAS SAID,  
03:38PM 9 WELL, HOW DO YOU KNOW WHAT EVIDENCE IS COMING IN? I DON'T HEAR  
03:38PM 10 FROM THE GOVERNMENT A REALISTIC ARGUMENT THAT THEY'RE GOING TO  
03:39PM 11 BE ABLE TO EXCLUDE ALL OF THE EVIDENCE THAT MS. HOLMES IS  
03:39PM 12 PLANNING TO PRESENT ON THIS ABUSE ISSUE, AND THE 12.2 NOTICE  
03:39PM 13 ITSELF TELLS ME THAT THEY'RE GOING TO ARGUE, AND MR. DOWNEY HAS  
03:39PM 14 SAID, THAT MS. HOLMES'S ALLEGED ABUSE THAT SHE SUFFERED HAS  
03:39PM 15 GONE TO HER MENS REA WHICH SHE COULDN'T HAVE COMMITTED THE  
03:39PM 16 FRAUD OFFENSES. THAT'S WHAT A 12.2 NOTICE IS, AND THAT'S WHAT  
03:39PM 17 I THINK IS GOING ON HERE.

03:39PM 18 UNLESS WE GET A RULING, WE'RE GOING TO BE DEEPLY  
03:39PM 19 PREJUDICED.

03:39PM 20 AND THERE'S A COUPLE OF THINGS, YOUR HONOR, JUST BECAUSE I  
03:39PM 21 HAVE THE FLOOR HERE FOR A MINUTE. FIRST OF ALL, THE COURT MADE  
03:39PM 22 A COMMENT ABOUT THE QUESTION OF WHETHER MS. HOLMES WILL TESTIFY  
03:39PM 23 AT TRIAL. OBVIOUSLY MR. DOWNEY AND HIS TEAM DON'T HAVE TO TELL  
03:39PM 24 ANYBODY WHETHER MS. HOLMES WILL TESTIFY OR NOT.

03:39PM 25 BUT WHEN WE LOOK AT THE SITUATION, IF TRIAL ALREADY

03:39PM 1 STARTED AND WE STILL DIDN'T KNOW WHETHER MS. HOLMES WAS  
03:39PM 2 TESTIFYING OR NOT OR WHAT WAS GOING TO HAPPEN, YOU COULDN'T  
03:39PM 3 HAVE A SITUATION WHERE THERE'S A JOINT TRIAL AND ALL OF A  
03:39PM 4 SUDDEN THE EVIDENCE COMES IN AND THEN YOU SAY, SORRY,  
03:40PM 5 MR. BALWANI, SOME EVIDENCE HAS COME IN THAT IS PREJUDICIAL TO  
03:40PM 6 YOU, WE'RE JUST GOING TO DISMISS YOU OUT OF THE TRIAL. THAT'S  
03:40PM 7 NOT APPROPRIATE. THAT IS SO BURDENSOME TO MR. BALWANI, AND,  
03:40PM 8 FRANKLY, POSSIBLY A DOUBLE JEOPARDY ISSUE, THAT WE DON'T THINK  
03:40PM 9 THAT THAT'S REALLY A REALISTIC WAY.

03:40PM 10 SO IT DOESN'T MATTER WHETHER WE KNOW WHETHER MS. HOLMES IS  
03:40PM 11 GOING TO TESTIFY OR NOT GOING TO TESTIFY. THE PROBLEM WE HAVE  
03:40PM 12 HERE IS THAT WE KNOW THAT SOME EVIDENCE, WHATEVER IT IS ON THIS  
03:40PM 13 ABUSE ISSUE, IS COMING IN, AND THAT'S WHAT IS PREJUDICIAL.

03:40PM 14 IN ADDITION, YOUR HONOR, AS I JUST SAID, THE PREJUDICE IS  
03:40PM 15 THE EVIDENCE COMING IN AT ALL.

03:40PM 16 THE GOVERNMENT HAS EVERYTHING THAT THEY NEED RIGHT NOW TO  
03:40PM 17 ARGUE AGAINST MR. BALWANI'S SEVERANCE MOTION IF THEY CHOOSE TO  
03:40PM 18 DO SO, FOR EXAMPLE, IF THEY HAVE ANY SUPPORT FOR THE NOTION  
03:40PM 19 THAT THERE SHOULD BE A JOINT TRIAL ON THE FACE OF ABUSE  
03:40PM 20 DEFENSE. WE CITED THREE FEDERAL CASES WHERE THE SAME ISSUE  
03:40PM 21 AROSE. IF THEY HAVE ANY ARGUMENT THAT THEY CAN HAVE A JOINT  
03:40PM 22 TRIAL WHEN THE CODEFENDANT IS PRESENTING EVIDENCE OF ABUSE OF  
03:40PM 23 THIS NATURE, THEN THEY SHOULD BRING IT FORWARD IN THEIR  
03:41PM 24 OPPOSITION AND THEY SHOULD DO THAT NOW.

03:41PM 25 AND THEN ONE OTHER THING, YOUR HONOR. THE COURT ADDRESSED

03:41PM 1 THIS ISSUE, JUST TO SWITCH, THE FDA DOCUMENTS ISSUE, THAT MAYBE  
03:41PM 2 THIS ISN'T AS IMPORTANT BECAUSE WE'RE CHOOSING TO GO FORWARD  
03:41PM 3 WITH DEPOSITIONS ON THE S.E.C. SIDE.

03:41PM 4 YOU KNOW, THE REASON WE'RE DOING THAT, AND I JUST WANT TO  
03:41PM 5 SAY SO WE'RE CLEAR ON THE RECORD, IS THAT WE REALLY DO NEED THE  
03:41PM 6 DOCUMENTS, AND WE'LL OBVIOUSLY BE RESERVING OUR RIGHT TO THESE  
03:41PM 7 DEPOSITIONS.

03:41PM 8 BUT WE DECIDED THAT FOR US TO BE PREPARED FOR A TRIAL TO  
03:41PM 9 START ON JULY 28TH, WHILE TRYING TO TAKE DEPOSITIONS IN THE  
03:41PM 10 SUMMER, WOULD JUST BE UNTENABLE. WE WOULD HAVE TO GET THESE  
03:41PM 11 DONE NOW SO WE CAN TURN ALL OF OUR ATTENTION TO THE CRIMINAL  
03:41PM 12 CASE AS THE MONTHS GO BY HERE, AND IT HAS NOTHING TO DO WITH  
03:41PM 13 NOT REALLY WANTING OR NEEDING THE FDA DOCUMENTS.

03:41PM 14 WE HAD ISSUED A SUBPOENA A LONG TIME AGO, BUT I DON'T WANT  
03:41PM 15 TO ARGUE THAT. I JUST WANT TO POINT OUT THAT WE'RE NOT GOING  
03:41PM 16 FORWARD WITH DEPOSITIONS BECAUSE WE DON'T CARE ABOUT THE FDA  
03:41PM 17 DOCUMENTS. WE VERY MUCH DO.

03:41PM 18 IN FACT, AS MR. CAZARES MAY HAVE SAID EARLIER IN THE DAY,  
03:41PM 19 THE DOCUMENTS WE'RE GETTING FROM EVEN THE PRODUCTION THAT HAS  
03:42PM 20 OCCURRED SO FAR UNDER THE COURT'S NOVEMBER 5TH ORDER IS  
03:42PM 21 MATERIAL RULE 16, HIGHLY RELEVANT TO BOTH THE S.E.C. AND THE  
03:42PM 22 DOJ CASES.

03:42PM 23 SO WHAT WE NEED, YOUR HONOR, AND AS WE HAVE SAID IN OUR  
03:42PM 24 BRIEFING, IS THAT WE NEED THE GOVERNMENT TO FILE ITS OPPOSITION  
03:42PM 25 TO OUR SEVERANCE MOTION AND WE NEED TO FILE OUR REPLY.

03:42PM 1 FRANKLY, I THINK WE CAN DEAL WITH DR. MECHANIC'S  
03:42PM 2 DECLARATION IN OUR REPLY JUST TO SAVE SOME TIME HERE, AND THEN  
03:42PM 3 WE CAN GET A RULING FROM THE COURT AS TO SEVERANCE OR NO  
03:42PM 4 SEVERANCE SO WE KNOW WHAT WE'RE FACING AT TRIAL.

03:42PM 5 THE GOVERNMENT'S SCHEDULE, WHILE THAT MIGHT WORK FOR THE  
03:42PM 6 BATTLE BETWEEN THE GOVERNMENT AND MS. HOLMES, JUST DOESN'T WORK  
03:42PM 7 FOR MR. BALWANI AND IS DEEPLY PREJUDICIAL TO HIS RIGHT TO A  
03:42PM 8 FAIR TRIAL.

03:42PM 9 THE COURT: OKAY. THANK YOU. MS. BAEHR-JONES.

03:42PM 10 MS. BAEHR-JONES: YES. THANK YOU, YOUR HONOR. JUST  
03:42PM 11 TO RESPOND TO MR. COOPERSMITH. I THINK THIS ALSO GOES BACK TO  
03:42PM 12 A POINT THAT MR. DOWNEY MADE, WHICH IS THIS ASSUMPTION THAT  
03:42PM 13 IT'S CLEARLY ADMISSIBLE AND IT'S VERY LIKELY GOING TO COME IN  
03:42PM 14 AND THE EXPERT TESTIMONY IS VERY LIKELY GOING TO COME IN, AND I  
03:43PM 15 THINK THAT'S AN INCORRECT ASSUMPTION.

03:43PM 16 WE DON'T EVEN HAVE YET AN EXPERT WHO SAID I BELIEVE THAT  
03:43PM 17 THIS UNDERMINES FOR MENS REA. WE DON'T EVEN HAVE THAT, NOT  
03:43PM 18 EVEN IN THE NOTICE. AND IN FACT, WHEN WE DID A SEARCH FOR PTSD  
03:43PM 19 AND WIRE FRAUD, WE COULD FIND NO CASES IN WHICH SUCH A DEFENSE  
03:43PM 20 HAD BEEN RAISED.

03:43PM 21 MOREOVER, WHEN WE'VE INQUIRED -- YOU KNOW, WE'VE TRIED OUR  
03:43PM 22 BEST TO TALK TO EXPERTS AS QUICKLY AS WE COULD. WE HAVE -- THE  
03:43PM 23 RESPONSE HAS SORT OF UNIVERSALLY BEEN THIS IS NOT A DEFENSE.

03:43PM 24 I THINK THERE'S ACTUALLY GOING TO BE QUITE A BIG QUESTION  
03:43PM 25 AS TO WHETHER THIS COMES IN AT A DAUBERT HEARING. I DO NOT

03:43PM 1 THINK THAT IT IS JUST VERY LIKELY. I THINK IT'S A BIG QUESTION  
03:43PM 2 FOR THE COURT TO REALLY CONSIDER.

03:43PM 3 THE COURT: WELL, THANK YOU. MR. LEACH.

03:43PM 4 MR. LEACH: AND I THINK IT UNDERSCORES, YOUR HONOR,  
03:43PM 5 THERE ARE SO MANY UNKNOWNNS ABOUT WHAT IS COMING IN AND WHAT THE  
03:43PM 6 CONTOURS OF THE DEFENSE ARE.

03:43PM 7 MR. BALWANI'S MOTION WAS TRIGGERED BY THE PROSPECT THAT  
03:44PM 8 THERE WAS GOING TO BE A 12.2 NOTICE.

03:44PM 9 LET'S SEE WHAT THAT LOOKS LIKE. LET'S KNOW WHAT WE'RE  
03:44PM 10 DEALING WITH, AND THEN THE COURT WILL HAVE THE RECORD THAT IT  
03:44PM 11 NEEDS TO MAKE AN EDUCATED DECISION ABOUT THIS.

03:44PM 12 I THINK THE WORSE OF ALL WORLDS WOULD BE WE MAKE A  
03:44PM 13 SEVERANCE BASED ON INCOMPLETE INFORMATION RIGHT NOW, AND THEN  
03:44PM 14 WE HAVE TWO TRIALS. ALL OF THAT -- EVERYTHING THAT ENTAILS  
03:44PM 15 BASED ON A DEFENSE THAT NEVER COMES IN, BASED ON ANECDOTAL  
03:44PM 16 INSTANCES OF ABUSE THAT MIGHT NOT PAINT SOMEBODY IN A  
03:44PM 17 FLATTERING LIGHT BUT DON'T RISE TO THE LEVEL OF PREJUDICE THAT  
03:44PM 18 REQUIRE SEPARATE TRIALS.

03:44PM 19 AND HAD THE GOVERNMENT HAD THE OPPORTUNITY TO BE HEARD  
03:44PM 20 ABOUT THIS BEFORE WE KNEW THIS WAS GOING TO BE RAISED, THE  
03:44PM 21 DEFENSE DIDN'T NEED, BUT WE SET THESE DATES IN MOTION NOT  
03:44PM 22 KNOWING THAT WE'RE GOING TO BE WRESTLING WITH THESE 12.2  
03:44PM 23 MOTIONS THAT SEEM TO US THIS IS A PREMATURE MOTION AND LET'S  
03:44PM 24 HAVE THAT FULSOME RECORD AND THAT WILL HELP EVERYBODY MAKE THE  
03:44PM 25 BEST DECISION POSSIBLY ABOUT WHETHER SEVERANCE IS WARRANTED



03:45PM 1 HERE.

03:45PM 2 THE COURT: OKAY. THANK YOU.

03:45PM 3 MR. DOWNEY: YOUR HONOR, JUST TWO QUICK THINGS, ONE  
03:45PM 4 OF WHICH IS A PROCESS THING.

03:45PM 5 THE CONFUSION ABOUT WHAT HAD BEEN SUBMITTED UNDER SEAL I  
03:45PM 6 THINK MAY HAVE DEPRIVED THE COURT OF CONSIDERING WHETHER IT  
03:45PM 7 WOULD ACCEPT OUR EX PARTE IN CAMERA SUBMISSION. I DRAW THAT TO  
03:45PM 8 THE COURT'S ATTENTION BECAUSE I THINK ITS RELEVANT TO SOME OF  
03:45PM 9 THE COURT'S QUESTIONS TODAY.

03:45PM 10 THE SECOND POINT TO RAISE FOR THE COURT'S CONSIDERATION --  
03:45PM 11 ULTIMATELY THIS WILL ARISE IN CONSIDERATION OF THE MOTIONS --  
03:45PM 12 BUT JUST TO IDENTIFY FOR THE COURT, THE INVITATION THAT THE  
03:45PM 13 GOVERNMENT IS EXTENDING TO THE COURT TO TRY TO TAILOR THE  
03:45PM 14 PRESENTATION TO MINIMIZE PREJUDICE TO MR. BALWANI BEGINS TO  
03:45PM 15 CREATE DANGERS ON THE OTHER SIDE.

03:45PM 16 MS. HOLMES, IF SHE CHOOSES, HAS A RIGHT TO PRESENT  
03:45PM 17 EVIDENCE RELATED TO THIS DEFENSE, AND AS I HAVE INDICATED TO  
03:46PM 18 THE COURT, SUCH A PRESENTATION IS LIKELY AND SUBSTANTIAL.

03:46PM 19 I THINK IT WOULD BE -- AS THE COURT CONSIDERS THESE ISSUES  
03:46PM 20 AND THINKS ABOUT EVEN PROCESS GOING FORWARD, IT'S IMPORTANT TO  
03:46PM 21 RECOGNIZE THAT THERE ARE DANGERS ON BOTH SIDES. TRYING TO  
03:46PM 22 TAILOR THE PRESENTATION PRESENTS ALMOST AS MANY.

03:46PM 23 THE COURT: I APPRECIATE THAT. I'M GRATEFUL FOR  
03:46PM 24 THIS CONVERSATION. IT'S VERY UNIQUE CIRCUMSTANCES THAT PRESENT  
03:46PM 25 HERE.

03:46PM 1 SO WHAT I'D LIKE TO DO IN REGARDS TO THE SEVERANCE MOTION  
03:46PM 2 IS TO RELIEVE THE GOVERNMENT OF THEIR OBLIGATION TO FILE A  
03:46PM 3 RESPONSE TODAY. I THINK THAT'S INAPPROPRIATE, AND I APPRECIATE  
03:46PM 4 THE DEFENSE CONSIDERATION IN THAT REGARD.

03:46PM 5 WHAT I WOULD LIKE, THOUGH -- AND AGAIN, THIS IS REACHING  
03:46PM 6 OVER TO YOUR SIDE, MR. DOWNEY -- THAT I THINK IT WOULD BE  
03:46PM 7 HELPFUL JUST FOR THE RECORD TO HAVE THE DECLARATION SIGNED BY  
03:47PM 8 THE DOCTOR AND PROVIDED IN SOME MANNER WITH SOME ATTESTATION AS  
03:47PM 9 TO WHAT IT IS AND WHAT YOU DID. I THINK THAT WOULD BE HELPFUL  
03:47PM 10 FOR THE COURT AT LEAST FOR THE RECORD AND WHEN THE COURT MAKES  
03:47PM 11 A DECISION, IF I MAKE IT JUST BASED ON THAT OR IF I WANT MORE.  
03:47PM 12 I THINK THAT'S APPROPRIATE.

03:47PM 13 MR. DOWNEY: WE'LL DO THAT, YOUR HONOR.

03:47PM 14 THE COURT: AND IF YOU COULD PROVIDE THAT TO YOUR  
03:47PM 15 COLLEAGUES, THAT WOULD BE HELPFUL.

03:47PM 16 MR. DOWNEY: WE CERTAINLY WILL.

03:47PM 17 THE COURT: AND AS TO MR. CAZARES, I DO THINK IT  
03:47PM 18 WOULD BE HELPFUL TO ALLOW YOU TO AUGMENT, IF YOU WISH. I'LL  
03:47PM 19 MAKE THE OPPORTUNITY AVAILABLE TO YOU IF YOUR TEAM WISHES TO  
03:47PM 20 AUGMENT OR ADD TO YOUR INITIAL MOTION.

03:47PM 21 I RECOGNIZE THAT YOU FILED THE MOTION OUT OF AN ABUNDANCE  
03:47PM 22 OF CAUTION TO THE DEADLINES, AND YOU DIDN'T HAVE THE -- YOU HAD  
03:47PM 23 NOTICE THIS WAS GOING TO COME FORWARD, BUT YOU DIDN'T HAVE THE  
03:47PM 24 DECLARATION OF DR. MECHANIC, I DON'T BELIEVE YOU DID, AT THE  
03:48PM 25 TIME YOU FILED, BUT IT MIGHT BE HELPFUL TO STATE YOUR POSITION.

03:48PM 1 AND I'M NOT ASKING YOU FOR ANOTHER 25 PAGES, I DON'T THINK YOU  
03:48PM 2 NEED THAT, BUT I WOULD WELCOME AN OPPORTUNITY TO HEAR FROM YOUR  
03:48PM 3 TEAM AS TO WHAT YOU THINK, BASED ON THE CONVERSATIONS HERE, THE  
03:48PM 4 REPRESENTATION BY COUNSEL AND I DON'T KNOW HOW MUCH TIME YOU  
03:48PM 5 NEED TO GET THAT TO US, AND THEN THAT WOULD THEN INFORM THE  
03:48PM 6 TIME FOR YOUR OPPOSITION, LOOKING AT THE GOVERNMENT.

03:48PM 7 MR. CAZARES: THAT WAS THE QUESTION I WAS GOING TO  
03:48PM 8 ASK THE COURT IS THE SCHEDULE FOR THIS. SOME OF OUR TEAM ARE  
03:48PM 9 BUSY WITH DEPOSITIONS AND SOME OF OUR TEAM ARE STARTING TRIAL  
03:48PM 10 NEXT WEEK IN ANOTHER COURTROOM HERE IN THIS BUILDING.

03:48PM 11 THE COURT: WHAT COULD BE MORE IMPORTANT THAN THIS  
03:48PM 12 CASE? COME ON.

03:48PM 13 MR. BROWN: YOU CAN ASK JUDGE FREEMAN THAT, YOUR  
03:48PM 14 HONOR.

03:48PM 15 THE COURT: OKAY.

03:48PM 16 MR. CAZARES: SO BASED ON WHAT I UNDERSTAND IS GOING  
03:48PM 17 ON RIGHT NOW, I WOULD LIKE A WEEK TO TEN DAYS, YOUR HONOR.  
03:48PM 18 MAYBE MONDAY OF NEXT WEEK.

03:48PM 19 THE COURT: THAT'S FINE. I'M GOING TO LET THE  
03:48PM 20 GOVERNMENT THINK ABOUT THIS.

03:48PM 21 LET ME ALSO SUGGEST THIS, THE OTHER QUESTION I HAVE IS  
03:49PM 22 WHEN WE COME TO FEBRUARY 10TH, HOW ARE WE GOING TO ARGUE THESE  
03:49PM 23 MOTIONS IF ANY OF THESE MOTIONS THAT ARE GOING TO BE HEARD ON  
03:49PM 24 FEBRUARY 10TH ARE UNDER SEAL? WHAT IS THE PROCESS FOR THAT?  
03:49PM 25 AND I INVITE YOUR SUGGESTIONS AS TO THAT.

03:49PM 1 BUT DO WE NEED TO AND SHOULD I SCHEDULE A SEPARATE HEARING  
03:49PM 2 FOR THE SEVERANCE? I'M HAPPY TO DO THAT. IT SOUNDS LIKE MAYBE  
03:49PM 3 THAT'S WHAT WE NEED TO DO OTHER THAN THE FEB 10 DATE.

03:49PM 4 MS. BAEHR-JONES: YOUR HONOR, THE GOVERNMENT DOES  
03:49PM 5 ANTICIPATE THAT IT WILL LIKELY WANT TO HAVE EVIDENCE PRESENTED,  
03:49PM 6 POTENTIALLY A GOVERNMENT EXPERT. WE MAY HAVE QUESTIONS FOR THE  
03:49PM 7 DEFENSE EXPERT.

03:49PM 8 THE COURT: THAT'S INTERESTING. WHAT IF THEY CALL  
03:49PM 9 YOUR DOCTOR?

03:49PM 10 MR. COOPERSMITH: YOUR HONOR, THIS IS  
03:49PM 11 JEFF COOPERSMITH. I DON'T UNDERSTAND WHAT MS. BAEHR-JONES  
03:49PM 12 SAID. THAT HAS NOTHING TO DO WITH OUR MOTION.

03:49PM 13 WHAT I WOULD SUGGEST, AS MR. CAZARES SAID, WE CAN GET OUR  
03:50PM 14 SUPPLEMENTAL PLEADING, AND WE WILL TAKE ADVANTAGE OF THE  
03:50PM 15 COURT'S OFFER, AND WE THANK YOU FOR THAT, AND GET THAT IN IN A  
03:50PM 16 WEEK.

03:50PM 17 WE WOULD LIKE TO SEE THIS ALL BRIEFED SO THAT THE COURT  
03:50PM 18 CAN HEAR MR. BALWANI'S SEVERANCE MOTION ON FEBRUARY 10TH. I DO  
03:50PM 19 AGREE WITH YOUR HONOR THAT THAT HEARING SHOULD BE SET ON THAT  
03:50PM 20 DATE AS A SEALED HEARING BECAUSE OF THE ISSUES INVOLVED.

03:50PM 21 JUST ON THAT SCORE, I UNDERSTAND THAT THERE ARE A LOT OF  
03:50PM 22 DOCUMENTS THAT HAVE BEEN FILED UNDER SEAL. I THINK HALF OF  
03:50PM 23 THEM ARE PROBABLY ADMINISTRATIVE MOTIONS TO SEAL, AND IF THE  
03:50PM 24 COURT WERE TO GIVE GUIDANCE THAT PLEADINGS AND FILINGS RELATED  
03:50PM 25 TO THIS ISSUE COULD FILED UNDER SEAL, WE COULD PROBABLY

03:50PM 1 DISPENSE WITH ABOUT HALF OF THE SEALED FILINGS BECAUSE THERE  
03:50PM 2 ARE ADMINISTRATIVE MOTIONS TO SEAL THAT ACCOMPANY THE  
03:50PM 3 DECLARATIONS.

03:50PM 4 BUT PUTTING THAT ASIDE, WE THINK IT IS APPROPRIATE TO SET  
03:50PM 5 THAT HEARING ON MR. BALWANI'S SEVERANCE MOTION ON  
03:50PM 6 FEBRUARY 10TH.

03:51PM 7 WE WOULD LIKE TO GET OUR BRIEF IN AS SOON AS WE CAN. WE  
03:51PM 8 CAN DO A SUPPLEMENTAL. WE'LL EVEN GET OUR REPLY IN SO THAT  
03:51PM 9 IT'S TIMELY FOR FEBRUARY 10TH. THE GOVERNMENT SHOULD GET THEIR  
03:51PM 10 OPPOSITION IN SO THAT THE COURT AND WE CAN ALL CONSIDER IT IN  
03:51PM 11 TIME FOR THAT FEBRUARY 10TH HEARING.

03:51PM 12 AS WE SAID IN OUR MOTION TO SEAL, AND I KNOW THE COURT HAS  
03:51PM 13 PROVISIONALLY SEALED THINGS, AND WE APPRECIATE THAT, THIS IS SO  
03:51PM 14 DEEPLY PREJUDICE TO MR. BALWANI AND IT'S GOING TO SO TAINT THE  
03:51PM 15 JURY POOL. MR. LEACH AND THE GOVERNMENT HAS ARGUED THAT WE  
03:51PM 16 HAVEN'T SHOWN ENOUGH IN TERMS OF THE TAINT TO THE JURY POOL.

03:51PM 17 I DON'T KNOW WHAT MORE WE CAN DO, YOUR HONOR. THIS IS THE  
03:51PM 18 MOST HIGH PROFILE CASE THAT HAS COME AROUND IN QUITE A WHILE.  
03:51PM 19 THERE'S A THEATRICAL FILM COMING OUT OF ALL THINGS. WE'VE LAID  
03:51PM 20 ALL OF THIS OUT IN OUR BRIEFING.

03:51PM 21 TO GET MR. BALWANI A FAIR TRIAL, WE THINK THAT THE  
03:51PM 22 GOVERNMENT AND THE COURT SHOULD DO EVERYTHING POSSIBLE TO KEEP  
03:51PM 23 THIS JURY POOL FREE FROM THAT TAINT. WE'RE NOT ASKING FOR  
03:51PM 24 EVERYTHING TO BE SEALED FOR ALL TIMES. IF THE SEVERANCE MOTION  
03:52PM 25 IS GRANTED, AND OBVIOUSLY WE THINK IT SHOULD BE, AFTER

03:52PM 1 MR. BALWANI'S TRIAL THERE WON'T BE ANY SEALED FILINGS ON THIS  
03:52PM 2 POINT ANYMORE, AND IT WILL BE OUT THERE.

03:52PM 3 SO WE NEED TO HAVE IT SEALED REALLY FOR THE TIME UNTIL  
03:52PM 4 MR. BALWANI COMPLETES HIS TRIAL TO MAKE SURE THAT WE CAN HAVE A  
03:52PM 5 FAIR TRIAL, AND WE THINK THAT SHOULD HAPPEN AND THE SAME GOES  
03:52PM 6 FOR THE FEBRUARY 10TH HEARING.

03:52PM 7 THE COURT: ALL RIGHT. THANK YOU. I NOTE THAT  
03:52PM 8 THERE ARE OTHER MOTIONS ON CALENDAR FOR FEBRUARY 10TH, AND I'M  
03:52PM 9 NOT SURE THAT WE CAN CAPTURE EVERYTHING IN ONE DAY BASED ON THE  
03:52PM 10 RECORD AND THE PLEADINGS THAT ARE ON FILE.

03:52PM 11 YOU'RE NODDING IN AGREEMENT.

03:52PM 12 MR. DOWNEY: I TEND TO AGREE, YOUR HONOR. I THINK  
03:52PM 13 THERE'S A FAIR AMOUNT IN ANY EVENT FOR THAT DAY, AND IT MAY BE  
03:52PM 14 BEST TO SELECT A SEPARATE DAY FOR HEARING ON SEVERANCE.

03:52PM 15 THE COURT: AND, MS. KRATZMANN, CAN YOU JUST REMIND  
03:52PM 16 US, THE CALENDAR ON FEBRUARY 10TH. THAT'S OUR REGULAR CRIMINAL  
03:52PM 17 CALENDAR. THESE ARE CALENDARED FOR 10:00 A.M.?

03:53PM 18 THE CLERK: YES, YOUR HONOR, THAT'S CORRECT.

03:53PM 19 THE COURT: SO THAT GIVES US TWO HOURS BEFORE THE  
03:53PM 20 1:30 CALENDAR. I THINK THAT WAS PROBABLY POOR JUDGMENT ON MY  
03:53PM 21 PART TO SCHEDULE IT THAT WAY.

03:53PM 22 IS IT POSSIBLE TO RESET ANYTHING ON OUR 1:30 CALENDAR TO  
03:53PM 23 MAYBE TUESDAY OR WEDNESDAY? OR DO WE HAVE --

03:53PM 24 THE CLERK: IT IS SET RATHER LIGHT, YOUR HONOR,  
03:53PM 25 ALTHOUGH YOU DO HAVE TWO SENTENCINGS, ONE AT 1:30 AND THEN TWO

03:53PM 1 STATUSES, AND THEN THE SENTENCING OF BRYN HANLEY AT 2:00.

03:53PM 2 CURRENTLY WE DO NOT HAVE ANYTHING SCHEDULED FOR  
03:53PM 3 FEBRUARY 11TH OR THE 12TH IF YOU WOULD LIKE TO SPECIAL SET.

03:53PM 4 THE COURT: MAYBE WHAT I'LL DO IS SEE ABOUT MOVING  
03:53PM 5 THE OTHER CRIMINAL CALENDAR FROM THE 10TH TO THE 11TH OR 12TH  
03:53PM 6 WHICH WOULD GIVE US THE ENTIRETY OF THE DAY.

03:53PM 7 MR. DOWNEY: YOUR HONOR, THAT SOUNDS FINE. MAY I  
03:54PM 8 JUST LOOK AT MY CALENDAR?

03:54PM 9 THE COURT: YES, PLEASE. GO RIGHT AHEAD.

03:54PM 10 (DISCUSSION AMONGST COUNSEL OFF THE RECORD.)

03:54PM 11 THE COURT: MR. DOWNEY, IT'S REFRESHING TO SEE YOU  
03:54PM 12 REFER TO A PAPER CALENDAR.

03:54PM 13 (LAUGHTER.)

03:54PM 14 MR. DOWNEY: THE 11TH OR 12TH IS FINE ON OUR SIDE,  
03:55PM 15 YOUR HONOR.

03:55PM 16 THE COURT: WELL, NO. I WAS SAYING THAT WHAT WE'LL  
03:55PM 17 DO IS WE'LL RESERVE -- I'LL MOVE SOME THINGS SO THAT WE HAVE  
03:55PM 18 THE 10TH.

03:55PM 19 MR. DOWNEY: OKAY.

03:55PM 20 THE COURT: ALL DAY THE 10TH. I WON'T MOVE THINGS  
03:55PM 21 TO THE 11TH SHOULD WE NEED TO CONTINUE TO THE NEXT DAY. I'LL  
03:55PM 22 KEEP THAT OPEN FOR US, TOO, IF YOU WOULD DO THE SAME.

03:55PM 23 MR. DOWNEY: THAT'S FINE, YOUR HONOR.

03:55PM 24 THE COURT: OKAY.

03:55PM 25 MR. DOWNEY: AND, YOUR HONOR, MIGHT I JUST --

03:55PM 1 THE COURT: MR. CAZARES, DOES THAT WORK FOR YOU?

03:55PM 2 MR. CAZARES: THE 10TH, YES, YOUR HONOR.

03:55PM 3 THE COURT: OKAY. THANK YOU.

03:55PM 4 MR. DOWNEY: AND MIGHT I SUGGEST THAT WE FOLLOW FOR  
03:55PM 5 NOW, GIVEN THE PROVISIONAL SEALING, IF WE FOLLOW A PROCEDURE  
03:55PM 6 SIMILAR TO TODAY, I THINK THAT WOULD BE HELPFUL.

03:55PM 7 THE COURT: I, I THINK I'D LIKE TO GET AN ORDER OUT  
03:55PM 8 FOR YOUR BENEFIT THAT SUGGESTS THAT IF YOU'RE GOING TO SEAL  
03:55PM 9 SOMETHING, WE DON'T HAVE TO GO THROUGH THAT WHOLE PROCESS AND  
03:55PM 10 THE -- WERE THERE OPPOSITIONS TO ADMINISTRATIVE MOTIONS TO  
03:55PM 11 SEAL? WERE THERE ACTUALLY --

03:55PM 12 MR. LEACH: YOUR HONOR, THERE HAVE BEEN OPPOSITIONS  
03:55PM 13 TO THE MOTIONS TO SEAL THE SEVERANCE MOTIONS.

03:55PM 14 WE THINK WHOLESALE SEALING HERE IS INAPPROPRIATE. THERE  
03:56PM 15 ARE LARGE SWATHS OF THE PLEADINGS THAT CAN BE MADE PUBLIC.  
03:56PM 16 IT'S A VERY, VERY HIGH STANDARD TO SEAL A COURTROOM LIKE THIS  
03:56PM 17 AND TO SEAL PLEADINGS THE WAY THE DEFENDANTS ARE REQUESTING  
03:56PM 18 HERE, AND WE DON'T THINK THAT THEY'VE COME CLOSE TO SATISFYING  
03:56PM 19 IT.

03:56PM 20 THE COURT: OKAY.

03:56PM 21 MR. LEACH: SO WE'VE PRESERVED OUR RIGHTS AND  
03:56PM 22 OPPOSE -- I DON'T THINK WE'VE OPPOSED ALL OF THEM, BUT WE'VE  
03:56PM 23 BASICALLY SAID THE COURT HAS RULED PRELIMINARILY ON THIS.

03:56PM 24 BUT THE GOVERNMENT OBJECTS TO SEALING.

03:56PM 25 THE COURT: WELL, LET ME SAY I'M LOATHE ALSO TO GIVE



03:56PM 1 WHOLESALE PERMISSION TO SEAL THINGS BECAUSE, YOU KNOW, I THINK  
03:56PM 2 I'M PRETTY CLOSE TO FINISH SQUEEZING THE SPONGE ON SEALING  
03:56PM 3 DOCUMENTS HERE, I THINK I REALLY AM.

03:56PM 4 MR. DOWNEY: THIS IS MR. BALWANI'S ISSUE SO I'LL LET  
03:56PM 5 HIM ADDRESS IT.

03:56PM 6 WE HAVE ISSUES THAT PROBABLY WOULD REQUIRE SOME REDACTION  
03:56PM 7 BECAUSE THERE'S PERSONAL HEALTH INFORMATION AND THAT TYPE OF  
03:56PM 8 THING, BUT I THINK THE SEALING ISSUE IS REALLY MR. BALWANI'S  
03:56PM 9 ISSUE.

03:56PM 10 THE COURT: RIGHT. MR. CAZARES.

03:57PM 11 MR. CAZARES: YOUR HONOR, THE SEALING ISSUE AND THE  
03:57PM 12 RISKS RAISED BY UNSEALING DOCUMENTS HERE GOES TO THE HEART OF  
03:57PM 13 OUR SEVERANCE MOTION AND WHAT WE'RE TRYING TO PROTECT, WHICH IS  
03:57PM 14 A FAIR TRIAL IN THIS DISTRICT THIS YEAR BEFORE NEWS WORD OF THE  
03:57PM 15 DEFENSES THAT ARE GOING TO BE APPARENTLY RAISED BY MS. HOLMES  
03:57PM 16 LEAK TO THE PUBLIC.

03:57PM 17 IT'S OUR HOPE TO GET TO TRIAL BEFORE THAT HAPPENS. AND  
03:57PM 18 THE CHANCE OF SOME SORT OF -- OBVIOUSLY, I WOULDN'T BLAME  
03:57PM 19 ANYONE HERE IN THE COURTROOM, BUT THE CHANCE OF A MISTAKE BY  
03:57PM 20 SOMEONE, WHETHER IT'S MY OFFICE, THE CLERK'S OFFICE, SOMEWHERE,  
03:57PM 21 AND WORD LEAKS THROUGH A DOCUMENT THAT IS INSUFFICIENTLY  
03:57PM 22 REDACTED OR NOT REDACTED AT ALL, ALL OF THE WORK THAT WE WOULD  
03:57PM 23 HAVE DONE UP UNTIL NOW TO TRY TO ENSURE A FAIR TRIAL WOULD BE  
03:57PM 24 FOR NOT.

03:57PM 25 THE COURT: WELL, AS YOU KNOW, THERE'S A VOIR DIRE

03:57PM 1 PROCESS THAT IS VERY EXTENSIVE, THERE ARE QUESTIONNAIRES THAT  
03:57PM 2 ARE USED, AND JURORS ARE PLACED UNDER OATH AT PERIL OF PERJURY  
03:57PM 3 TO GIVE THEIR RESPONSES.

03:58PM 4 MR. CAZARES: AND AS THE COURT KNOWS, IN HIGH  
03:58PM 5 PROFILE CASES THAT VOIR DIRE CAN BE VERY DIFFICULT,  
03:58PM 6 CHALLENGING, PARTICULARLY GIVEN THE SUBJECT MATTER OF THE ISSUE  
03:58PM 7 HERE, THE LIKELY NEED TO VOIR DIRE JURORS ON AN INDIVIDUAL  
03:58PM 8 BASIS OUTSIDE THE PRESENCE OF THE REST OF THE POOL THAT YOU  
03:58PM 9 WOULDN'T WANT TO TAINT, THE HOPE THAT THOSE JURORS ARE KEEPING  
03:58PM 10 WORDS OF THE ISSUES RAISED IN THEIR ANSWERS TO THEMSELVES, THE  
03:58PM 11 FACT THAT THEY'RE BEING ACTUALLY HONEST AND NOT LYING TO TRY TO  
03:58PM 12 GET ON TO A JURY IN A HIGH PROFILE CASE HAPPENS AS WELL.

03:58PM 13 ALL OF THAT, YOUR HONOR, SUGGESTS THAT THE NEED TO KEEP  
03:58PM 14 THESE MATTERS SEALED FOR AS LONG AS POSSIBLE TO ENSURE  
03:58PM 15 MR. BALWANI A FAIR TRIAL IS REALLY IMPORTANT.

03:58PM 16 IF THE COURT IS IN ANY WAY CONSIDERING UNSEALING MATTERS,  
03:58PM 17 ONE, WE OBJECT IF THEY TOUCH UPON THIS ISSUE BECAUSE I DO THINK  
03:58PM 18 IT IS THAT ISSUE.

03:58PM 19 EVEN THIS IDEA OF REDACTING DOCUMENTS IS GOING TO INVITE  
03:58PM 20 SPECULATION FROM THE PRESS HERE. OH, THERE'S A MOTION TO  
03:58PM 21 SEVER, BUT WE, THE PRESS, DON'T KNOW THE BASIS.

03:59PM 22 WELL, LET'S GO TALK TO SOME FORMER AUSA'S, SOME FORMER  
03:59PM 23 DEFENSE LAWYERS, AND SOME FORMER FEDERAL JUDGES. WHAT ARE THE  
03:59PM 24 BASES FOR A SEVERANCE IN THIS KIND OF CASE, MALE, FEMALE  
03:59PM 25 DEFENDANTS FACING FEDERAL CRIMINAL CHARGES? THERE AREN'T THAT

03:59PM 1 MANY, YOUR HONOR. IT'S A HANDFUL OF BASES. IT INVITES  
03:59PM 2 SPECULATION, AND IT'S GOING TO INVITE SPECULATION IN THE  
03:59PM 3 PUBLIC. ARTICLES WE HAVE WRITTEN ABOUT IT, THAT'S WHAT WE ON  
03:59PM 4 OUR SIDE ARE REALLY HOPING TO AVOID, AND THAT'S WHY FOR US THE  
03:59PM 5 SEALING IS MORE IMPORTANT TO ANYBODY ELSE, IN PARTICULAR THE  
03:59PM 6 GOVERNMENT, AND I UNDERSTAND THE GOVERNMENT'S ISSUES AND THE  
03:59PM 7 POLICY REASONS WHY YOU WANT A PUBLIC TRIAL.

03:59PM 8 A PUBLIC TRIAL, THAT'S WHAT ALL OF THESE RULES ARE  
03:59PM 9 ENTITLED TO PRESERVE, NOT A PUBLIC KIND OF READING AND  
03:59PM 10 DISCLOSING AND PUBLICIZING OF ALL ELEMENTS OF EVERY PART OF A  
03:59PM 11 CASE. THAT IS NOT NECESSARY.

03:59PM 12 THE GOVERNMENT ITSELF, THE GRAND JURY TRANSCRIPTS ARE  
03:59PM 13 SEALED AND REMAIN SEALED FOREVER UNTIL SOME SPECIAL SITUATION  
04:00PM 14 WARRANTS THEIR DISCLOSURE, DESPITE THE FACT THAT THEY ARE ALSO  
04:00PM 15 A PUBLIC MATTER INVOLVING THE PUBLIC, PUBLIC CHARGES AND  
04:00PM 16 TRIALS.

04:00PM 17 THE COURT: WELL, GRAND JURY PROCEEDINGS AREN'T  
04:00PM 18 PUBLIC, BUT I THINK I CAPTURE YOUR MEANING.

04:00PM 19 MR. CAZARES: THEY INVOLVE THE PUBLIC AND PUBLIC  
04:00PM 20 CHARGES AND PUBLIC MATTERS.

04:00PM 21 THE COURT: RIGHT. WELL, WHEN WE INVITE HIGH SCHOOL  
04:00PM 22 STUDENTS AND COLLEGE STUDENTS AND OTHERS, AND GRAMMAR SCHOOL  
04:00PM 23 STUDENTS TO COME VISIT OUR COURTS, ONE OF THE THINGS WE PROUDLY  
04:00PM 24 TELL THEM IS THAT THESE ARE YOUR COURTS AND THEY BELONG TO YOU  
04:00PM 25 AND THEY'RE ALWAYS OPEN BECAUSE THAT'S THE LAW, THE COURTROOMS

04:00PM 1 ARE OPEN FOR EVERYONE TO COME AND ENJOY AND WATCH AND LISTEN  
04:00PM 2 AND LEARN OF THEIR COMMUNITY.

04:00PM 3 SO TO MR. LEACH'S POINT, THE ANTITHESIS TO THAT IS SEALING  
04:00PM 4 COURTROOMS. WE DON'T HAVE DARK CHAMBERS AND THOSE TYPES OF  
04:00PM 5 THINGS.

04:00PM 6 MR. CAZARES: NO. AND WE DON'T DISAGREE WITH THAT,  
04:00PM 7 YOUR HONOR.

04:00PM 8 THE COURT: WE'RE ALSO COGNIZANT OF PROTECTING  
04:00PM 9 PARTY'S INTERESTS TO THE EXTENT WE CAN. WE'RE IN A DIFFERENT  
04:00PM 10 AGE NOW, OF COURSE. WE KNOW NEWS FLASHES IN MINUTES. THAT IS  
04:00PM 11 TO YOUR POINT, THINGS CAN GO GLOBAL IN A MINUTE.

04:00PM 12 BUT ALSO CONCURRENT WITH THAT IS THINGS ARE FORGOTTEN IN A  
04:01PM 13 MINUTE AND SOMETHING ELSE MORE IMPORTANT COMES UP IN THE NEWS,  
04:01PM 14 AND THE ATTENTION SPAN OF FOLKS NEWS WISE IS MINUTES IF NOT  
04:01PM 15 SECONDS.

04:01PM 16 SO ALL OF THESE THINGS I CAPTURE, AND THEY'RE ALL THINGS  
04:01PM 17 THAT WE ALL CONSIDER WHEN WE LOOK AT THIS.

04:01PM 18 IT IS UNUSUAL, AND I THINK WE ALL AGREE, IT'S UNUSUAL TO  
04:01PM 19 SEAL A COURTROOM, IT IS.

04:01PM 20 AND TODAY I FOUND IT WAS APPROPRIATE BECAUSE WE'RE  
04:01PM 21 TOUCHING ON THESE SUBJECTS TO TALK ABOUT A DEFENDANT'S  
04:01PM 22 SITUATION.

04:01PM 23 MR. CAZARES: I WAS AT THE U.S. ATTORNEY'S OFFICE  
04:01PM 24 LONG ENOUGH, YOUR HONOR, TO BE AWARE OF QUITE A FEW SEALING OF  
04:01PM 25 PROCEEDINGS THAT WAS REQUESTED BY THE GOVERNMENT AND REQUESTED

04:01PM 1 BY THE DEFENSE.

04:01PM 2 SO IT'S NOT SOMETHING THAT HAPPENS ONCE IN A MILLENIA. IT  
04:01PM 3 HAPPENS. IT'S NOT FAVORED, AND I CLEARLY UNDERSTAND WHY, BUT  
04:01PM 4 THERE ARE GOOD REASONS FOR SEALING A COURTROOM IN CERTAIN  
04:01PM 5 SITUATIONS WHERE --

04:01PM 6 THE COURT: I FOUND THEM TODAY, AND THAT'S WHY I  
04:01PM 7 SEALED THIS PROCEEDING.

04:01PM 8 MR. CAZARES: I UNDERSTAND, YOUR HONOR. I WAS  
04:01PM 9 MAKING THE POINT. SORRY ABOUT THAT. I DON'T MEAN TO BELABOR  
04:01PM 10 IT.

04:01PM 11 THE COURT: I FOUND IT TODAY, AND THAT'S WHY IT'S  
04:01PM 12 SEALED TODAY.

04:02PM 13 SO WHAT SHOULD WE DO? LET'S TALK ABOUT A SCHEDULE. NOW  
04:02PM 14 THAT WE'VE CAPTURED THAT WE'RE GOING TO MEET ALL DAY ON THE  
04:02PM 15 10TH AND PERHAPS ON THE 11TH, WHAT ABOUT FILING SCHEDULES?

04:02PM 16 MR. CAZARES: IT SOUNDS LIKE AFTER CONFERRING WITH  
04:02PM 17 MR. COOPERSMITH, OUR TEAM IS GOOD WITH ONE WEEK FOR FILING THE  
04:02PM 18 SUPPLEMENTAL. SO NEXT WEEK.

04:02PM 19 THE COURT: IS THAT WHAT YOU SAID, MR. COOPERSMITH?

04:02PM 20 MR. COOPERSMITH: YES, YOUR HONOR. WE WOULD DO IT  
04:02PM 21 IN EVEN A SHORTER TIME IF NECESSARY BECAUSE WE WANT TO MAKE  
04:02PM 22 SURE THAT THE GOVERNMENT HAS THAT AND GETS THEIR OPPOSITION IN  
04:02PM 23 AND WE CAN GET OUR REPLY IN.

04:02PM 24 SO IF WE HAD A WEEK, THAT WOULD PUT US ON THE 20TH.

04:02PM 25 THE COURT: OKAY.

04:02PM 1 MR. COOPERSMITH: FRANKLY, I THINK THAT WOULD WORK  
04:02PM 2 BECAUSE THE GOVERNMENT WOULD HAVE REALLY UNTIL THE END OF THE  
04:02PM 3 MONTH, AND WE CAN GET A REPLY IN BEFORE FEBRUARY 10TH. SO IF  
04:02PM 4 WE HAD A WEEK --

04:02PM 5 THE COURT: LET ME ASK THE GOVERNMENT YOUR POSITION  
04:02PM 6 ABOUT YOUR OPPOSITION THEN. IF YOU RECEIVE THIS, THIS IS  
04:02PM 7 CONDITION OF MR. WADE GETTING ALL -- EXCUSE ME -- MR. DOWNEY  
04:02PM 8 GETTING US THE SIGNED COPY.

04:02PM 9 MS. BAEHR-JONES: YES, YOUR HONOR, THAT WAS GOING TO  
04:02PM 10 BE MY QUESTION IS WHEN WOULD WE GET THE SIGNED COPY OF THE  
04:03PM 11 DECLARATION?

04:03PM 12 AND THE OTHER MATTER I WANTED TO RAISE IS JUST WE'RE GOING  
04:03PM 13 TO ASK FOR A REVERSE JENCKS FOR DR. MECHANIC, AND WE WANTED TO  
04:03PM 14 ASK FOR A SCHEDULE ON THAT AS WELL BECAUSE SHE HAS A LOT OF  
04:03PM 15 NOTES.

04:03PM 16 THE COURT: SURE. SO INITIALLY THE RESPONSE TO --

04:03PM 17 MS. BAEHR-JONES: WE HAVE NO OBJECTION TO THE  
04:03PM 18 RESPONSE WITHIN A WEEK AND THEIR FILING OF A NEW BRIEF WITHIN A  
04:03PM 19 WEEK, AND THEN I THINK WE CAN GET SOMETHING BY THE END OF THE  
04:03PM 20 MONTH.

04:03PM 21 MR. LEACH: THE 31ST.

04:03PM 22 MS. BAEHR-JONES: THE 31ST, YOUR HONOR.

04:03PM 23 THE COURT: FRIDAY THE 31ST.

04:03PM 24 IS THE THIRD A HOLIDAY?

04:03PM 25 THE CLERK: OF FEBRUARY, YOUR HONOR?

04:03PM 1 THE COURT: YES.

04:03PM 2 THE CLERK: NO. THE 17TH IS A HOLIDAY.

04:03PM 3 THE COURT: OKAY. GOTCHA.

04:03PM 4 AND CLOSE OF BUSINESS THE 31ST OR DO YOU WANT THE 3RD?

04:03PM 5 MR. LEACH: WE'LL TAKE THE 3RD.

04:03PM 6 THE COURT: OKAY. END OF BUSINESS THE 3RD.

04:04PM 7 MR. COOPERSMITH: YOUR HONOR, IF WE GOT IT THE 31ST

04:04PM 8 BY EVEN THE END OF THE DAY, THEN WE WOULD HAVE THAT WEEKEND TO

04:04PM 9 START CRACKING ON OUR BRIEF. SO THAT WOULD BE IDEAL.

04:04PM 10 I'LL JUST POINT OUT, THE GOVERNMENT HAS HAD OUR MOTION FOR

04:04PM 11 SEVERANCE SINCE DECEMBER 3RD, SO THIS IS NOT SOMETHING THAT

04:04PM 12 THEY'RE JUST GETTING, AND THEY SHOULD REALLY, AS THE COURT HAS

04:04PM 13 POINTED OUT, THE RESPONSE WAS ACTUALLY DUE TODAY, BUT WE

04:04PM 14 UNDERSTAND THAT THEY'RE GOING TO BE GIVEN MORE TIME.

04:04PM 15 THE COURT: WELL, MR. COOPERSMITH, THERE'S NEW --

04:04PM 16 WE'RE HAVING A DIFFERENT DISCUSSION NOW AND THERE'S --

04:04PM 17 MR. LEACH: IF MR. COOPERSMITH WANTS THE WEEKEND TO

04:04PM 18 WORK, I'M HAPPY TO GIVE IT TO HIM. THE GOVERNMENT WILL FILE

04:04PM 19 ITS OPPOSITION ON THE 31ST.

04:04PM 20 MS. BAEHR-JONES: YOUR HONOR, IS THERE -- JUST TO

04:04PM 21 FOLLOW UP ON THAT SO WE CAN RESPOND TO THE DECLARATION AND

04:04PM 22 REVERSE JENCKS.

04:04PM 23 ARE THERE GOING TO BE DEADLINES FOR THOSE?

04:04PM 24 MR. DOWNEY: WE DON'T YET HAVE. WE HAVE A JENCKS

04:04PM 25 DISCLOSURE DEADLINE FROM THE GOVERNMENT IN EARLY FEBRUARY, SO

04:05PM 1 SOME TIME THEREAFTER. I ASSUME THE COURT WILL SET A DATE FOR  
04:05PM 2 REVERSE JENCKS.

04:05PM 3 MS. BAEHR-JONES: WELL, IF DR. MECHANIC IS  
04:05PM 4 TESTIFYING ON THE 10TH, PRESUMABLY THE GOVERNMENT SHOULD HAVE  
04:05PM 5 SOME AMOUNT OF TIME TO REVIEW HER JENCKS MATERIAL BEFORE THE  
04:05PM 6 HEARING ITSELF.

04:05PM 7 MR. DOWNEY: YOUR HONOR, I WASN'T UNDERSTANDING TO  
04:05PM 8 HEAR THAT DR. MECHANIC WOULD BE TESTIFYING ON THE 10TH. I  
04:05PM 9 DON'T THINK WE'RE THERE YET.

04:05PM 10 THE COURT: I'M NOT -- I MADE A COMMENT ABOUT IT  
04:05PM 11 SOUNDS LIKE SHE'S GOING TO SUBPOENA YOUR DOCTOR.

04:05PM 12 MS. BAEHR-JONES: WELL, YOUR HONOR, IF THEY SUBMIT A  
04:05PM 13 DECLARATION IN SUPPORT OF THEIR MOTION, THEN MY UNDERSTANDING  
04:05PM 14 OF THE RULES IS THAT WE WOULD HAVE THE OPPORTUNITY TO  
04:05PM 15 CROSS-EXAMINE THAT DECLARANT AND WE WOULD BE ENTITLED TO THEIR  
04:05PM 16 JENCKS MATERIAL, JUST LIKE THE GOVERNMENT WOULD PROVIDE ANY  
04:05PM 17 NOTES OR ANY REPORTS THAT ARE JENCKS WHEN ITS WITNESS TAKES THE  
04:05PM 18 STAND, AND JENCKS ATTACHES BASED ON THE HEARING, NOT BASED  
04:06PM 19 ON -- IT ATTACHES WHEN SOMEBODY TAKES THE STAND.

04:06PM 20 MR. DOWNEY: LET ME SEPARATE OUT A FEW THINGS AND  
04:06PM 21 TAKE A STEP BACK BECAUSE I'M ACTUALLY CONFUSED BASED ON  
04:06PM 22 COUNSEL'S COMMENTS.

04:06PM 23 MAY I JUST INQUIRE WHAT SCHEDULE WAS THE COURT  
04:06PM 24 ANTICIPATING WITH REGARD TO ANY MOTION PENDING FROM MS. HOLMES?  
04:06PM 25 THE SAME SCHEDULE OR A DIFFERENT ONE?



04:06PM 1 THE COURT: WELL, I'M NOT DISTURBING YOUR SCHEDULE.

04:06PM 2 WHAT I'M DOING IS HEARING THE SEVERANCE MOTION AS TO  
04:06PM 3 MR. BALWANI FIRST.

04:06PM 4 MR. DOWNEY: OKAY.

04:06PM 5 THE COURT: AND THAT'S WHAT I'D LIKE TO DO.

04:06PM 6 MS. BAEHR-JONES: YOUR HONOR, JUST TO CLARIFY, THE  
04:06PM 7 SEVERANCE MOTION THAT MR. BALWANI IS GOING TO BE FILING, THIS  
04:06PM 8 ADDITIONAL INFORMATION WILL BE RELATING TO THE DECLARATION OF  
04:06PM 9 DR. MECHANIC.

04:06PM 10 THE COURT: THAT'S RIGHT. AND THAT'S THE -- I THINK  
04:06PM 11 THAT'S THE PROBLEM WITH THE CAROUSEL HERE IS THAT HIS MOTION IS  
04:06PM 12 DEPENDENT, OR RELIES I SHOULD SAY, ON A DECLARATION FILED BY  
04:06PM 13 THE CODEFENDANT IN THE CASE. WE'RE GOING TO GET A SIGNED COPY  
04:07PM 14 OF HER DECLARATION, ATTESTATION, WHATEVER YOU WANT TO CALL IT.  
04:07PM 15 THAT WILL PROBABLY BE BY THE END OF THIS WEEK I EXPECT.

04:07PM 16 MR. DOWNEY: I WOULD EXPECT SO, YOUR HONOR. AGAIN,  
04:07PM 17 AND WE'VE COVERED THIS EXTENSIVELY, AGAIN, THAT IS A  
04:07PM 18 DECLARATION ABOUT PRESENT STATE OF MIND. IT DOES NOT REFLECT  
04:07PM 19 OR WILL NOT BE NECESSARILY HELPFUL TO THE COURT IN CONDUCTING  
04:07PM 20 AN INQUIRY OF WHAT IS LIKELY TO BE ADMITTED AT TRIAL OR WHAT IS  
04:07PM 21 ADMISSIBLE AT TRIAL, WHICH IS I THINK THE INQUIRY THAT THE  
04:07PM 22 COURT WAS SEEKING.

04:07PM 23 THE COURT: THE ISSUE THAT RELATES TO MR. BALWANI'S  
04:07PM 24 SEVERANCE MOTION IS I SUPPOSE THE TYPE OF EVIDENCE THAT IS  
04:07PM 25 GOING TO BE OFFERED BASED ON THIS -- THE DECLARATION, BUT IF

04:07PM 1 THAT TYPE OF EVIDENCE IS GOING TO BE OFFERED EITHER BY A FACT  
04:07PM 2 WITNESS, A THIRD PARTY, OR BY THE DEFENDANT IN THE CASE.

04:07PM 3 WE'VE HEARD MR. DOWNEY TALK ABOUT THE HIGH EXPECTATIONS, I  
04:08PM 4 GUESS. I DON'T THINK HE USED THAT PHRASE, BUT A SUGGESTION  
04:08PM 5 THAT THERE WILL BE AT LEAST THAT EVIDENCE OFFERED.

04:08PM 6 MS. BAEHR-JONES: BUT DOESN'T THAT, YOUR HONOR,  
04:08PM 7 DEPEND ON THE FACT THAT AN EXPERT IS ASSERTING THAT THERE IS A  
04:08PM 8 12.2 DEFENSE HERE AND FOR THAT TO BE A FACT THAT IS IN THE  
04:08PM 9 RECORD BEFORE THE COURT THERE HAS TO BE SOME DECLARATION FROM  
04:08PM 10 DR. MECHANIC SAYING, "I CAN MAKE THAT FINDING. I'M GOING TO  
04:08PM 11 MAKE THIS FINDING IF THERE'S A CONNECTION BETWEEN THESE SET OF  
04:08PM 12 FACTS AND THE DIAGNOSIS FOR THESE SET OF FACTS AND A MENS REA  
04:08PM 13 OF THE DEFENDANT."

04:08PM 14 IF THERE IS NOTHING IN THE RECORD -- AND THE GOVERNMENT  
04:08PM 15 WANTS TO RESPOND TO THIS -- IF THERE'S NOTHING IN THE RECORD,  
04:08PM 16 THE GOVERNMENT CAN'T RESPOND TO THAT POINT, AND THERE'S NOTHING  
04:08PM 17 THAT SUPPORTS DEFENDANT BALWANI'S MOTION.

04:08PM 18 THE COURT: WELL, I -- IF A FACT -- IF A DEFENDANT,  
04:09PM 19 IF A DEFENDANT IN THE CASE IS GOING TO TESTIFY ABOUT FACTS THAT  
04:09PM 20 A CODEFENDANT DID TO HIM OR HER, THAT MAY BE SUFFICIENT FOR THE  
04:09PM 21 COURT TO LOOK AND CONSIDER THAT TO DECIDE WHETHER OR NOT THAT  
04:09PM 22 IN AND OF ITSELF IS PREJUDICIAL WITHOUT THE NECESSITY OF  
04:09PM 23 SAYING, WELL, IS IT ON A DIFFERENT LEVEL? WILL IT BE ENHANCED  
04:09PM 24 BY EXPERT TESTIMONY?

04:09PM 25 I THINK WHAT I HEAR YOU SAYING IS, WELL, THAT'S FINE,

04:09PM 1 JUDGE, BUT THAT INDIVIDUAL'S TESTIMONY, ALBEIT EVEN IF IT'S A  
04:09PM 2 DEFENDANT, MAY NOT BE ADMISSIBLE BECAUSE IT MIGHT NOT HAVE  
04:09PM 3 RELEVANCE BY ITSELF UNLESS IT IS SUPPORTED BY AN EXPERT IN  
04:09PM 4 REGARDS TO ONE OF THOSE TOPICS THAT I MENTIONED EARLIER, EVEN  
04:09PM 5 IF IT IS -- THE EXPERT TESTIMONY IS NOT TO SAY THAT SHE HAS A  
04:09PM 6 CONDITION OR HE HAS A CONDITION BUT RATHER -- OR THE TESTIMONY  
04:10PM 7 WOULD BE TOWARDS THE CREDIBILITY.

04:10PM 8 MS. BAEHR-JONES: WELL, IT WOULD BE A THRESHOLD  
04:10PM 9 MATTER, YOUR HONOR, IS THE GOVERNMENT'S POINT. THE FACTS OF  
04:10PM 10 INTIMATE PARTNER ABUSE THAT TOOK PLACE NOT AT THE COMPANY, NOT  
04:10PM 11 RELATING TO THE FRAUD DIRECTLY, NOWHERE NEAR COMMUNICATIONS  
04:10PM 12 THAT WERE MADE TO BOARD MEMBERS OR TO THE MEDIA, THINGS THAT  
04:10PM 13 HAPPENED IN THAT REALM ARE ONLY RELEVANT IF THERE IS AN EXPERT  
04:10PM 14 WHO IS WILLING TO SAY THAT THESE MENTAL CONDITIONS COULD BEAR  
04:10PM 15 ON GUILT AND RIGHT NOW THERE IS NOTHING -- THE DEFENDANTS HAVE  
04:10PM 16 NOT PROVIDED ANYTHING THAT SAYS THAT, AND THAT'S WHY THE  
04:10PM 17 GOVERNMENT IS ASKING FOR A DECLARATION FROM DR. MECHANIC THAT  
04:10PM 18 AT LEAST ESTABLISHES THIS VERY BASIC POINT.

04:10PM 19 IT DOESN'T HAVE TO BE THE FULL SUMMARY REPORT, BUT JUST  
04:10PM 20 SOMETHING THAT ESTABLISHES THAT SO WE CAN QUESTION HER ABOUT IT  
04:10PM 21 AND FOR THE COURT TO HAVE THAT INFORMATION, BECAUSE THE  
04:10PM 22 GOVERNMENT WILL BE OFFERING, I CAN GUARANTEE WE WILL BE  
04:11PM 23 OFFERING SOME SORT OF DECLARATION IN SUPPORT OF OUR OPPOSITION  
04:11PM 24 THAT PROVIDES SOME TESTIMONY FROM OUR EXPERT FOR THE COURT TO  
04:11PM 25 CONSIDER. AND THE GOVERNMENT SUBMITS IT WOULD BE WORTHWHILE TO

04:11PM 1 HAVE A PROCESS WHEREBY BOTH SIDES CAN SUBMIT EVIDENCE TO YOUR  
04:11PM 2 HONOR.

04:11PM 3 THE COURT: AND I THINK THAT'S BACK TO MR. DOWNEY'S  
04:11PM 4 POINT, WELL, IT SOUNDS LIKE 12.2 HEARING IN REGARDS TO TRIAL  
04:11PM 5 TESTIMONY. I THINK THAT'S WHAT I HEARD YOU SAY EARLIER.

04:11PM 6 MR. DOWNEY: THAT'S RIGHT, YOUR HONOR. I MEAN, I  
04:11PM 7 THINK, JUST TO BE CLEAR AS TO WHERE WE ARE, IT'S OBVIOUSLY A  
04:11PM 8 SOMEWHAT CONFUSING SITUATION. IT'S DIFFICULT.

04:11PM 9 BUT AT THIS POINT THE COURT SHOULDN'T TAKE ANY STEP THAT  
04:11PM 10 OBLIGATES MS. HOLMES TO PRESENT HER DEFENSE CASE.

04:11PM 11 THE COURT: AND I'VE BEEN VERY CAREFUL, AND I HOPE  
04:11PM 12 I'VE BEEN CAREFUL TO SUGGEST HERE OR STATE SPECIFICALLY HERE  
04:11PM 13 THAT I'M NOT ASKING YOU TO REVEAL ANY OF THAT TODAY.

04:11PM 14 MR. DOWNEY: I UNDERSTAND THAT. AND I THINK YOU  
04:11PM 15 WOULDN'T DO SO EITHER IN CONNECTION WITH A HEARING.

04:12PM 16 THE QUESTION IS THE COURT OBVIOUSLY HAS TO MAKE A DECISION  
04:12PM 17 AS TO LIKELIHOOD, AND WE THINK BASED ON WHAT IS IN FRONT OF THE  
04:12PM 18 COURT IT'S IN A POSITION TO DO SO ONE WAY OR THE OTHER.

04:12PM 19 MR. COOPERSMITH: AND, YOUR HONOR, LET ME ADD THAT  
04:12PM 20 WHAT THE GOVERNMENT HAS PROPOSED, AGAIN, IT SORT OF SHOVES  
04:12PM 21 MR. BALWANI TO THE SIDE AND HIS RIGHTS AND NOT WORRY ABOUT HIM  
04:12PM 22 UNTIL MUCH LATER, AND WE APPRECIATE THAT IT SOUNDS LIKE THE  
04:12PM 23 BRIEFING SCHEDULE IS GOING TO GET BACK ON TRACK HERE WITH  
04:12PM 24 MR. BALWANI'S MOTION.

04:12PM 25 MS. HOLMES'S DEFENSE, YOU KNOW, THAT WILL BE LIKE EXPLORED

04:12PM 1 IN THE FULLNESS OF TIME, BUT THE GOVERNMENT DOESN'T GET TO HOLD  
04:12PM 2 MR. BALWANI HOSTAGE WHILE IT LITIGATES WITH MS. HOLMES.

04:12PM 3 WE HAVE RIGHTS FOR MR. BALWANI. HE HAS HIS OWN TRIAL  
04:12PM 4 RIGHTS. WE NEED TO GET OUR SEVERANCE MOTION HEARD AND DECIDED,  
04:12PM 5 AND I THINK THERE'S GOING TO BE PLENTY TO GO ON GIVEN WHAT  
04:12PM 6 DEFENSE IS AND MS. HOLMES HAS ALREADY PUT FORWARD.

04:12PM 7 IN FACT, 12.2 ITSELF SAYS THAT IT'S A NOTICE OF EXPERT  
04:13PM 8 TESTIMONY RELATING TO A MENTAL ISSUE GOING TO GUILT, AND THAT'S  
04:13PM 9 WHAT SHE HAS DONE.

04:13PM 10 AND WE KNOW THEY INTEND TO PRESENT EVIDENCE. MR. DOWNEY  
04:13PM 11 HAS PROFFERED IN COURT TODAY THAT HE'S GOING TO PUT ON FACT  
04:13PM 12 WITNESSES, WHETHER IT'S THIRD PARTIES OR MS. HOLMES HERSELF,  
04:13PM 13 AND WE HAVE THAT DANGER, AND IT'S SIMPLY NOT POSSIBLE TO WAIT  
04:13PM 14 UNTIL TRIAL OR EVEN CLOSE TO TRIAL TO DEAL WITH MR. BALWANI'S  
04:13PM 15 MOTION.

04:13PM 16 SO, YOU KNOW, IT SOUNDS LIKE THE BRIEFING IS GOING TO GET  
04:13PM 17 BACK ON TRACK AND WITH A LITTLE HICCUP, AND IT SOUNDS LIKE  
04:13PM 18 WE'LL ARGUE IT ON FEBRUARY 10TH, BUT I THINK IT WORKS FOR  
04:13PM 19 MR. BALWANI TO MAKE SURE WE KNOW WHAT WE'RE FACING.

04:13PM 20 THE COURT: WHAT I HEAR THE GOVERNMENT SAYING,  
04:13PM 21 THOUGH, IS THAT THIS THRESHOLD QUESTION ABOUT THIS REALLY  
04:13PM 22 SHOULD BE TESTED BY AN OPPORTUNITY TO EXAMINE OR TO  
04:13PM 23 CROSS-EXAMINE, ET CETERA, ET CETERA, AND I CAPTURE THAT.

04:13PM 24 REMIND ME OF THE DATES AGAIN. EXCUSE ME, THE  
04:13PM 25 GOVERNMENT -- MR. CAZARES, YOU'RE GOING TO FILE YOUR

04:13PM 1 AUGMENTATION, YOUR SUPPLEMENTAL ON -- BY THE 31ST DID YOU SAY?

04:14PM 2 I AM SORRY.

04:14PM 3 MR. COOPERSMITH: THE 20TH.

04:14PM 4 THE COURT: THE 20TH. THANK YOU.

04:14PM 5 AND THE GOVERNMENT WILL FILE --

04:14PM 6 MS. BAEHR-JONES: BY THE 31ST, YOUR HONOR.

04:14PM 7 THE COURT: YOUR OPPOSITION BY THE 31ST. ALL RIGHT.

04:14PM 8 AND THEN WE HAVE OUR HEARING SET FOR THE 10TH AND

04:14PM 9 POSSIBLY THE 11TH. OKAY. WELL, LET'S PROCEED WITH THAT

04:14PM 10 SCHEDULE NOW.

04:14PM 11 MR. LEACH: AND MAYBE I'M BEING DENSE, YOUR HONOR.

04:14PM 12 I JUST WANT TO MAKE SURE THIS IS MR. BALWANI'S MOTION FOR

04:14PM 13 SEVERANCE, MS. HOLMES'S MOTION FOR SEVERANCE.

04:14PM 14 THE COURT: IT'S DEFERRED. I AM GOING TO DEFER --

04:14PM 15 WE'RE GOING TO TAKE MR. BALWANI'S FIRST. I'M DEFERRING

04:14PM 16 MS. HOLMES FOR NOW. I'D LIKE YOU TO FOCUS YOUR ATTENTION, THE

04:14PM 17 PARTIES, TO MR. BALWANI'S MOTION FIRST.

04:14PM 18 MR. LEACH: SO NO OPPOSITION TO THAT IS DUE TODAY,

04:14PM 19 EITHER?

04:14PM 20 THE COURT: CORRECT, TO MS. HOLMES. RIGHT.

04:14PM 21 MS. BAEHR-JONES: AND WITH RESPECT TO THE DISCOVERY

04:14PM 22 REQUEST, THE GOVERNMENT'S DISCOVERY REQUEST FOR JENCKS

04:14PM 23 MATERIALS AND TESTING DATA.

04:14PM 24 THE COURT: IS THAT SOMETHING THAT IS AVAILABLE?

04:14PM 25 MR. DOWNEY: YOUR HONOR, I'M SURE IT'S IN PART

04:14PM 1 AVAILABLE. SHE'S NOT YET A WITNESS. WE DON'T KNOW IF SHE'LL  
04:14PM 2 EVEN BE THE DESIGNATED EXPERT IN CONNECTION WITH THE CASE SO IT  
04:15PM 3 SEEMS LIKE IT'S PREMATURE TO --

04:15PM 4 THE COURT: WELL, WHAT I THINK WOULD BE HELPFUL IS  
04:15PM 5 IF SHE WISHES TO SIGN HER DECLARATION AS WE'VE SAID, BUT IF SHE  
04:15PM 6 COULD ALSO PROVIDE A PAGE OR TWO THAT PROVIDES SOME  
04:15PM 7 FOUNDATIONAL WHATEVER, THAT SHE DIDN'T DO IN HER DECLARATION,  
04:15PM 8 BUT JUST SOMETHING THAT OFFERS THE COURT SOME ASSISTANCE AS TO  
04:15PM 9 ANY OPINIONS THAT SHE MIGHT DRAW, I THINK THAT WOULD BE  
04:15PM 10 HELPFUL.

04:15PM 11 MY SENSE IS THAT SHE COULD PUT TOGETHER THREE OR FOUR  
04:15PM 12 PARAGRAPHS THAT SUGGEST THAT.

04:15PM 13 MR. DOWNEY: LET ME JUST GET CLARITY. SHE MAY WELL  
04:15PM 14 BE ABLE TO.

04:15PM 15 SHE HAS STATED AT SOME LENGTH THE PROCEDURES FOR THE BASIS  
04:15PM 16 OF THE OPINION. IS THE COURT SUGGESTING THAT SHE WOULD NOW  
04:15PM 17 PREVIEW THE TRIAL OPINIONS SHE MIGHT OFFER?

04:15PM 18 THE COURT: NO. NO, NO, NO, I'M NOT ASKING HER TO  
04:15PM 19 DO THAT.

04:15PM 20 BUT WHEN I LOOK AT HER DECLARATION, SHE TALKS ABOUT THE  
04:15PM 21 HISTORY AS SHE UNDERSTANDS IT, AND THEN SHE GIVES US LITERATURE  
04:16PM 22 AND HISTORICAL LITERATURE THAT SUPPORT THE EXISTENCE OF THIS  
04:16PM 23 CONDITION AND OTHERS AND THOSE TYPES OF THINGS.

04:16PM 24 BUT IF SHE WERE TO PROVIDE SOMETHING, A STATEMENT OF SOME  
04:16PM 25 SORT THAT WOULD GIVE US ADDITIONAL, GIVE ME ADDITIONAL

04:16PM 1 INFORMATION ABOUT, NOT NECESSARILY WHAT HER OPINION WOULD BE,  
04:16PM 2 BUT WHAT ALL OF THAT WOULD MEAN AS FAR AS A FINDING OF A  
04:16PM 3 CONDITION OR NOT.

04:16PM 4 I'M BEING -- I'M NOT BEING VERY ARTICULATE HERE. I DON'T  
04:16PM 5 WANT HER TO WRITE THE WHOLE REPORT HERE BY FEBRUARY 10TH. I  
04:16PM 6 DON'T THINK SHE CAN DO THAT BASED ON WHAT YOU'VE TOLD ME, BUT I  
04:16PM 7 THINK THERE'S SOMETHING SUPPLEMENTAL.

04:16PM 8 I GUESS WHAT I'M SAYING IS THAT THIS IS GOOD FOR A NOTICE,  
04:16PM 9 I SUPPOSE, BUT WHAT ELSE CAN SHE OFFER TO STRENGTHEN THE  
04:16PM 10 NOTICE? I GUESS I'LL PUT IT THAT WAY.

04:16PM 11 MR. DOWNEY: THE ONLY DIFFICULTY WITH THAT IS, YOUR  
04:17PM 12 HONOR, IS THAT THERE'S A -- I'M NOT SURE HOW MUCH ROOM THERE  
04:17PM 13 REALLY IS BETWEEN WHAT SHE WOULD OFFER AT TRIAL AND WHAT  
04:17PM 14 THAT -- THE SUBMISSION THE COURT IS ASKING FOR.

04:17PM 15 IF, IF THE COURT IS ASKING FOR HER DIAGNOSIS OF  
04:17PM 16 MS. HOLMES, I THINK THAT IS SOMETHING THAT SHE CAN DO AT LEAST  
04:17PM 17 AS TO PRESENT CONDITION. I THINK SHE HAS DONE THAT TO SOME  
04:17PM 18 EXTENT.

04:17PM 19 I'M NOT SURE WHETHER THE COURT IS SAYING SHE SHOULD GIVE  
04:17PM 20 THE SAME TYPE OF DIAGNOSIS AS TO HER STATE OF MIND DURING THE  
04:17PM 21 PERIOD OF THE OFFENSES OR WHAT ELSE SHORT OF EFFECTIVELY  
04:17PM 22 PREPARING A REPORT SHE COULD DO.

04:17PM 23 MS. BAEHR-JONES: WELL, YOUR HONOR, IF I COULD MAKE  
04:17PM 24 A SUGGESTION. I'VE RECEIVED 12.2(B) NOTICES IN THE PAST AND  
04:17PM 25 THEY ALWAYS INCLUDE SOME STATEMENT ABOUT THE EXPERT OPINING



04:17PM 1 THAT THIS -- THESE DEFICIENCIES, THESE ILLNESSES, THE MENTAL  
04:18PM 2 ILLNESSES, AFFECTED MENS REA TO SOME EXTENT. THEY DON'T HAVE  
04:18PM 3 TO GIVE THE FULL OPINION, THE FULL REPORT, BUT THEY AT LEAST  
04:18PM 4 HAVE TO ASSERT THE BASIC -- THAT THEY WILL HAVE THAT OPINION.

04:18PM 5 THE COURT: WELL, THE ISSUE HERE, MS. BAEHR-JONES,  
04:18PM 6 IS THAT THIS REPORT IS PREPARED FOR THE PURPOSES OF A SEVERANCE  
04:18PM 7 MOTION, AND IT TALKS ABOUT MS. HOLMES'S INABILITY TO SIT FOR  
04:18PM 8 TRIAL FOR THE REASONS STATED. WHAT IS IT? PTSD. [REDACTED]

04:18PM 9 [REDACTED]

04:18PM 10 [REDACTED]

04:18PM 11 [REDACTED]

04:18PM 12 [REDACTED]

04:18PM 13 I THOUGHT I SAW SOMETHING IN THERE, AND I WAS REVIEWING  
04:18PM 14 IT, BUT I THINK I WAS WRONG. THERE ISN'T ANYTHING IN HERE THAT  
04:18PM 15 REALLY SPEAKS SPECIFICALLY TO MENS REA.

04:19PM 16 MR. DOWNEY: SHE HASN'T NOT COMMENTED BECAUSE IT'S  
04:19PM 17 NOT REALLY GERMANE TO OUR MOTION. SHE HAS NOT COMMENTED ON THE  
04:19PM 18 TYPES OF ISSUES.

04:19PM 19 THE COURT: WHAT IS GERMANE ARE THE ALLEGATIONS HERE  
04:19PM 20 ABOUT, AT LEAST THAT SHE REPORTS, AND I PRESUME THAT SHE  
04:19PM 21 RECEIVED THAT INFORMATION FROM THE DEFENSE SOMEWHERE, EITHER  
04:19PM 22 THE DEFENDANT OR THE DEFENSE IN SOME MANNER. AND THEN WE TIE  
04:19PM 23 THAT TOGETHER TO THE REPRESENTATION THAT THERE'S A HIGH  
04:19PM 24 LIKELIHOOD -- I FORGET WHAT THE TERM WAS -- BUT THAT THERE'S  
04:19PM 25 GOING TO BE EVIDENCE.

04:19PM 1 YOUR POSITION IS THAT, WELL, THAT HAS TO BE TESTED THEN,  
04:19PM 2 BECAUSE IT MIGHT NOT BE ADMISSIBLE.

04:19PM 3 MS. BAEHR-JONES: WELL, YOUR HONOR, I THINK IT'S  
04:19PM 4 UNFAIR FOR THE GOVERNMENT NOT TO HAVE SOMETHING TO RESPOND TO,  
04:19PM 5 AND THE DEFENSE WANTS TO HAVE IT BOTH WAYS. THEY WANT TO SAY  
04:19PM 6 HER DECLARATION DOES NOT DEAL WITH 12.2, IT'S SOLELY ABOUT WHAT  
04:19PM 7 IS CURRENTLY HAPPENING.

04:19PM 8 AND THEN THEY ALSO WANT TO SAY ON THE BASIS OF THIS  
04:19PM 9 DECLARATION THE COURT SHOULD FIND THAT THERE'S A LIKELIHOOD  
04:19PM 10 THAT THIS 12.2(B) DEFENSE WILL COME IN AND THAT'S A FACT. THE  
04:20PM 11 FACT WITNESSES WILL COME IN AND TESTIFY IN SUPPORT OF THAT  
04:20PM 12 DEFENSE AND MAKE A PRETTY DECISIVE FINAL DETERMINATION THAT  
04:20PM 13 THESE TWO DEFENDANTS SHOULD BE SEVERED FROM EACH OTHER.

04:20PM 14 SO IT'S ONLY FAIR TO THE GOVERNMENT THAT WE BE ABLE TO  
04:20PM 15 RESPOND TO THE APPROPRIATE DECLARATION.

04:20PM 16 THE COURT: OKAY. I THINK I UNDERSTAND WHAT YOU'RE  
04:20PM 17 SAYING HERE.

04:20PM 18 WELL, LET'S -- I'M NOT GOING TO ASK THAT -- AS I SUGGESTED  
04:20PM 19 TO YOU, IF SHE CAN SIGN THIS. AND IF SHE CAN, DO ANOTHER  
04:20PM 20 SUMMARY, ANOTHER PARAGRAPH 18, PERHAPS PARAGRAPH 19 THAT  
04:20PM 21 PERHAPS ENHANCES HER FINDINGS, HER OBSERVATIONS, WHATEVER THAT  
04:20PM 22 MIGHT BE. I THINK THAT WOULD BE HELPFUL FOR ALL OF US.

04:20PM 23 IF THAT COULD BE DONE BY THE END OF THE WEEK, THAT WOULD  
04:20PM 24 BE HELPFUL, TOO.

04:20PM 25 MR. DOWNEY: WE'LL CERTAINLY GET THE SIGNED

04:20PM 1 DECLARATION IN, AND WE'LL EVALUATE WHETHER SHE'S ABLE TO DO  
04:20PM 2 WHAT THE COURT IS NOW IDENTIFYING.

04:20PM 3 THE COURT: OKAY. THANK YOU.

04:20PM 4 AND AGAIN, THE PROCESS FOR THE HEARING? SOME OF THE  
04:21PM 5 MOTIONS DON'T NEED TO BE I THINK IN A SEALED PROCEEDING, YOU  
04:21PM 6 KNOW, THE MOTION FOR BILL OF PARTICULARS AND THOSE THINGS.

04:21PM 7 WHAT ARE YOUR THOUGHTS ABOUT HOW ARE WE GOING TO PARSE OUT  
04:21PM 8 THE THINGS THAT ARE GOING TO BE SEALED AND WHAT ARE NOT?

04:21PM 9 MR. DOWNEY: I THINK THE MOTION TO SEVER, I DON'T  
04:21PM 10 THINK THERE'S A -- SPEAKING FOR MS. HOLMES, I DON'T BELIEVE  
04:21PM 11 THERE'S A NEED TO SEAL THOSE HEARINGS. I THINK THAT'S CORRECT  
04:21PM 12 AND MR. BALWANI'S COUNSEL IS INDICATING --

04:21PM 13 MR. CAZARES: WE AGREE, YOUR HONOR.

04:21PM 14 MR. DOWNEY: -- THEY AGREE.

04:21PM 15 THE COURT: OKAY.

04:21PM 16 MR. DOWNEY: SO WE MIGHT SUGGEST THAT WE DO THOSE IN  
04:21PM 17 THE MORNING AND THE SEVERANCE IN THE AFTERNOON.

04:21PM 18 THE COURT: THAT MAKES SENSE. LET'S PROCEED THAT  
04:21PM 19 WAY.

04:21PM 20 OKAY. ANYTHING FURTHER BEFORE WE BREAK FOR THE DAY?

04:21PM 21 MR. DOWNEY: NOT FOR MS. HOLMES.

04:21PM 22 THE COURT: MR. LEACH.

04:21PM 23 MR. LEACH: ONE POINT, YOUR HONOR. I DON'T WANT TO  
04:21PM 24 ARGUE THE MERITS OF THE SEALING, BUT I DO WANT TO RAISE THE  
04:22PM 25 ISSUE THAT SOME OF THE WHOLESALE SEALING OF THESE DOCUMENTS IS

04:22PM 1 LIMITING THE GOVERNMENT'S ABILITY TO EFFECTIVELY INVESTIGATE  
04:22PM 2 SOME OF THE ALLEGATIONS THAT HAVE BEEN RAISED.  
04:22PM 3 [REDACTED]  
04:22PM 4 [REDACTED]  
04:22PM 5 [REDACTED]  
04:22PM 6 [REDACTED] THIS IS AN ISSUE THAT  
04:22PM 7 MAY COME UP WITH WITNESSES. ORDINARILY IN THE COURSE OF OUR  
04:22PM 8 INTERVIEWS WE WOULD ASK WITNESSES TO DESCRIBE THE RELATIONSHIP  
04:22PM 9 BETWEEN MS. HOLMES AND MR. BALWANI.  
04:22PM 10 I'M NOT SUGGESTING REVEALING THE CONTENT OF ANYTHING THAT  
04:22PM 11 HAS BEEN SEALED, BUT THESE ARE MATTERS THAT THE GOVERNMENT  
04:22PM 12 NEEDS TO INVESTIGATE FOR BOTH DEFENDANTS. AND I JUST WANT TO  
04:22PM 13 FLAG THIS FOR THE COURT THAT THERE'S AN INVESTIGATION THAT HAS  
04:22PM 14 TO HAPPEN HERE, AND WE NEED TO ASK QUESTIONS. AND THE MORE  
04:22PM 15 DOCUMENTS THAT ARE SEALED, THE GREATER THE LIMITS ON OUR  
04:22PM 16 ABILITY ARE.  
04:22PM 17 THE COURT: [REDACTED]  
04:23PM 18 [REDACTED]  
04:23PM 19 [REDACTED]  
04:23PM 20 MR. LEACH: [REDACTED]  
04:23PM 21 [REDACTED]  
04:23PM 22 THE COURT: RIGHT. THEY HAVE JURISDICTION OVER  
04:23PM 23 STANFORD.  
04:23PM 24 MR. DOWNEY: RIGHT. WE HAVE NO ISSUE WITH THEM  
04:23PM 25 REACHING OUT TO DISCUSS THAT [REDACTED].

04:23PM 1 MR. COOPERSMITH: YOUR HONOR, I DON'T THINK THE  
04:23PM 2 SEALING ORDER WOULD APPLY TO THE GOVERNMENT GETTING [REDACTED]  
04:23PM 3 [REDACTED].

04:23PM 4 I MEAN, OBVIOUSLY THEY'RE NOT FREE TO TELL THE LOCAL  
04:23PM 5 POLICE THAT THERE'S A MOTION ON FILE AND THIS IS THE REASON WHY  
04:23PM 6 THEY'RE GETTING IT, BUT THEY CAN CERTAINLY GET WHATEVER [REDACTED]  
04:23PM 7 [REDACTED] THEY WANT. SO I DON'T THINK THAT'S REALLY AN ISSUE IN  
04:23PM 8 THE SEALING.

04:23PM 9 THE OTHER THING I WANT TO ASK THE COURT, JUST SO WE CAN  
04:23PM 10 MAYBE DISPENSE, AND I THINK THE COURT SAID THIS ALREADY BUT  
04:23PM 11 JUST TO BE CLEAR, WHEN WE FILE PAPERS AND UNLESS AND UNTIL THE  
04:23PM 12 COURT RULES OTHERWISE, WHILE WE'RE OPERATING PROVISIONALLY  
04:23PM 13 UNDER SEAL, CAN THE PARTIES SIMPLY FILE PAPERS RELATING TO  
04:23PM 14 THESE 12.2 ISSUES AND THE ABUSE ISSUES UNDER SEAL WITHOUT THE  
04:24PM 15 ADMINISTRATIVE MOTIONS THAT HAVE BEEN FILED SO FAR?

04:24PM 16 THE COURT: WELL, I REALLY WANT TO AVOID THE  
04:24PM 17 OPPOSITIONS AND THIS AND THAT AND CREATING MORE PAPERWORK AND  
04:24PM 18 PROBLEMS FOR THE PARTIES, AND FOR THE COURT, CANDIDLY, AND THE  
04:24PM 19 CLERK'S OFFICE.

04:24PM 20 IF, MR. LEACH, YOU WOULD STATE YOUR OBJECTION ON THE  
04:24PM 21 RECORD, YOUR TEAM'S OBJECTION TO SEALING WHOLESALE -- AND I  
04:24PM 22 DON'T WANT TO GRANT WHOLESALE SEALING BECAUSE I DON'T WANT TO  
04:24PM 23 LET THE CAMEL'S NOSE IN THE TENT AND HAVE EVERYTHING UNDER  
04:24PM 24 SEAL. BUT IF I LIMIT THIS TO THIS SEVERANCE MOTION AND  
04:24PM 25 ANYTHING FILED, AND I KNOW WE'RE GOING TO GET SOME PLEADINGS

04:24PM 1 FILED, AND I WILL PERMIT THOSE TO BE FILED UNDER SEAL NOTING  
04:24PM 2 YOUR STRONG OBJECTION TO THE SEALING, WOULD THAT SUFFICE SO WE  
04:24PM 3 DON'T HAVE TO GO THROUGH?

04:24PM 4 MR. LEACH: I CERTAINLY DON'T WANT THE  
04:24PM 5 ADMINISTRATIVE BURDEN OF AN OPPOSITION EVERY TIME, YOUR HONOR.  
04:24PM 6 I CAN'T CONSENT IN ADVANCE TO SOMETHING I'VE NEVER SEEN SO I  
04:25PM 7 DON'T KNOW WHAT TO SAY TO THAT.

04:25PM 8 BUT I -- SO I DON'T WANT TO BURDEN THE COURT  
04:25PM 9 ADMINISTRATIVELY. I DO WANT TO MAKE A RECORD THAT WE OBJECT TO  
04:25PM 10 THE WHOLESALE SEALING, AND WE THINK THERE ARE LARGE SWATHS OF  
04:25PM 11 THE MOTION TO SEVER AND THE 12.2 NOTICE THAT COULD BE MADE  
04:25PM 12 PUBLIC, THAT SHOULD BE MADE PUBLIC, AND I DON'T WANT TO BURDEN  
04:25PM 13 THE COURT ADMINISTRATIVELY.

04:25PM 14 THE COURT: WELL, I APPRECIATE THAT. THANK YOU.

04:25PM 15 SO JUST LIMITED TO THESE, TO THESE MOTIONS THAT WE'VE  
04:25PM 16 TALKED ABOUT TODAY, THE SEVERANCE, WHETHER OR NOT THE 12.2(B)  
04:25PM 17 IS GOING TO COME INTO THAT, I'LL PERMIT THOSE TO BE FILED UNDER  
04:25PM 18 SEAL WITHOUT NEED OF AN ADMINISTRATIVE BACK AND FORTH, NOTING  
04:25PM 19 THAT THE GOVERNMENT VEHEMENTLY OBJECTS TO THAT PROCESS.

04:25PM 20 MR. LEACH: AND, YOUR HONOR, I WOULD HOPE AFTER THE  
04:25PM 21 HEARING, AFTER THIS ISSUE OF IS THIS PREJUDICE SO GREAT THAT WE  
04:25PM 22 CAN'T FIND 12 JURORS IN A JURISDICTION OF 15 MILLION OR MORE  
04:25PM 23 PEOPLE TO SIT IN THIS CASE, THAT THE COURT WILL HAVE ADDITIONAL  
04:26PM 24 THOUGHTS AND GUIDANCE ABOUT HOW TO NAVIGATE THIS ISSUE.

04:26PM 25 THE COURT: YOU KNOW, SURPRISING OR NOT, I DON'T

04:26PM 1 THINK EVERYONE HAS A TELEVISION OR HAS INTERNET OR SOME PEOPLE  
04:26PM 2 STILL READ HARD COPY NEWSPAPERS AND SOME PEOPLE ONLY DO THAT  
04:26PM 3 ONCE A MONTH, SO YOU KNOW.

04:26PM 4 MR. LEACH: MY KIDS REMIND ME OF THAT EVERY DAY.

04:26PM 5 THE COURT: SOME PEOPLE STILL USE PAPER CALENDARS.

04:26PM 6 (LAUGHTER.)

04:26PM 7 THE COURT: ALL RIGHT. ANYTHING FURTHER?

04:26PM 8 MR. CAZARES: NOTHING FROM US, YOUR HONOR.

04:26PM 9 MR. DOWNEY: NOTHING FOR MS. HOLMES.

04:26PM 10 MR. LEACH: NO, YOUR HONOR.

04:26PM 11 MR. COOPERSMITH: NO.

04:26PM 12 THE COURT: THANK YOU FOR DELAYING YOUR TRAVEL,  
04:26PM 13 THOSE OF YOU WHO TRAVELLED, TO ALLOW THIS CONVERSATION, IT WAS  
04:26PM 14 VERY HELPFUL. I APPRECIATE IT.

04:26PM 15 MR. DOWNEY: WE APPRECIATE IT, YOUR HONOR. THANK  
04:26PM 16 YOU.

04:26PM 17 MR. CAZARES: THANK YOU, YOUR HONOR.

04:26PM 18 MR. BROWN: THANK YOU, YOUR HONOR.

04:26PM 19 (COURT CONCLUDED AT 4:26 P.M.)  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

DATED: JANUARY 22, 2020